***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

# Docket No. 76-1054

B
P/S

**IN THE**
## United States Court of Appeals
**For the Second Circuit**

---

UNITED STATES OF AMERICA,

*Appellee,*

— *vs.* —

LEON GREENBERG,

*Appellant.*

---

**On Appeal from the United States District Court for the Southern District of New York**

---

**APPENDIX**
**(Vol. I – Page 1a to 380)**

---


LIPSITZ, GREEN, FAHRINGER,
ROLL, SCHULLER & JAMES
HERALD PRICE FAHRINGER, ESQ.
*Attorney for Appellant*
One Niagara Square
Buffalo, New York 14202
(716) 849-1333



UNITED STATES COURT OF APPEALS
FILED
MAR 1 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT



Daily Record Corporation
Rochester, New York

(7849)

Spaulding Law Printing
Syracuse, New York

## TABLE OF CONTENTS


| | Page |
|---|---|
| Docket Entries, Indictment No. 75 Cr. 1010 | 1a |
| Docket Entries, Indictment No. 75 Cr. 532* | 3a |
| Indictment | 5a |
| Notice of Appeal | 12a |
| Notice of Motion, dated 7-14-75 | 13a |
| Affirmation of Herald Price Fahringer in Support of Motion | 16a |
| Government's letter of 7-17-75 in response to defendant's motion papers | 75a |
| Case and Exceptions | 1 |
| Opening Statement by Mr. Kingham | 2 |
| Opening Statement by Mr. Fahringer | 19 |
| Motions | 303 |
| Renewal of Motions | 528 |
| Summation by Mr. Kingham | 532 |
| Summation by Mr. Fahringer | 569 |
| Rebuttal Summation by Mr. Kingham | 612 |
| Charge of the Court | 630 |
| Exceptions to Charge | 673, 723 |
| Requests by the Jury | 677, 693, 725 |
| Requests to Charge | 695 |
| Further Charge of the Court | 717 |
| Motion for Mistrial | 724 |
| Verdict | 728 |
| Sentencing Proceedings, dated 1-21-76 | 733 |


---

* Indictment No. 75 Cr. 532 was superseded by indictment No. 75 Cr. 1010, which accounts for the two docket sheets.

Page

WITNESSES FOR THE GOVERNMENT:

Bernard Roth —
Direct ..... 46
Cross ..... 95
Redirect ..... 152
Recross ..... 162

Eileen McCullough —
Direct ..... 169
Cross ..... 173
Voir Dire ..... 175

Paul Grossinger —
Direct ..... 180
Cross ..... 197
Redirect ..... 207
Recross ..... 209

Robert Schoonmaker —
Direct ..... 210
Cross ..... 225
Redirect ..... 233
Recross ..... 239

Paula Bergman —
Direct ..... 245, 264
Voir Dire ..... 257, 295
Cross ..... 270
Redirect ..... 292, 299
Recross ..... 301

WITNESSES FOR THE DEFENDANT:

Eileen McCullough —
Direct ..... 310, 316
Voir Dire ..... 314, 329
Cross ..... 333

Page

Henry F. Werker —
Direct ..... 337
Cross ..... 341

Peter Donnelly —
Direct ..... 342, 349, 354
Voir Dire ..... 348, 350
Cross ..... 358
Redirect ..... 360

James Curran —
Direct ..... 361
Cross ..... 368
Redirect ..... 378

Richard Manzi —
Direct ..... 381
Cross ..... 387

Howard Samuels —
Direct ..... 390
Cross ..... 393
Redirect ..... 395

George Berkner —
Direct ..... 396

Herman Carbone —
Direct ..... 400
Cross ..... 402

Harold Sofferman —
Direct ..... 403
Cross ..... 404
Redirect ..... 405

Joseph Wasser —
Direct ..... 406
Cross ..... 407
Redirect ..... 413
Recross ..... 413

Page

Robert Del Campo —
Direct ..... 414
Cross ..... 416

John Duncan —
Direct ..... 420

Julius Kreitman —
Direct ..... 424

Ann Kaplan —
Direct ..... 428
Cross ..... 430

Loretta Kratz —
Direct ..... 434

Edna M. Coyle —
Direct ..... 438
Cross ..... 448
Redirect ..... 450

Hyman Hoffer —
Direct ..... 455
Cross ..... 466

Father Alfred Isacsson —
Direct ..... 471
Cross ..... 473
Redirect ..... 477
Recross ..... 478

**Index to Government's Exhibits:**


| Ex. No. | Description | Marked | Pages Received | Printed |
|---|---|---|---|---|
| 1. | | | 44 | |
| 1A-G. | Bills for Horsemen's outings | | 44 | 804 |
| 2. | | | 44 | |
| 3. | Check sent by Monticello Raceway to pay for Horsemen's outings | | 44 | 810 |

## Index to Government's Exhibits (cont'd):


| Ex. No. | Description | Marked | Pages Received | Printed |
|---|---|---|---|---|
| 4 thru 7. | | | 44 | |
| 8. | Greenberg Bar Mitzvah Master account | | 44 | 811 |
| 9. | Pay out for gratuities | | 44 | 812 |
| 10. | City Ledger | | 44 | 813 |
| 11. | | | 44 | |
| 12. | Greenberg Bar Mitzvah Memo | | 44 | 814 |
| 13. | Bill for Greenberg Bar Mitzvah | | 44 | 815 |
| 14 and 15. | | | 44 | |
| 15A. | Greenberg letter of 4-6-71 | | 44 | 816 |
| 16 thru 18. | | | | |
| 19. | Bill for Greenberg B Mitzvah | | 44 | 818 |
| 20. | Greenberg's personal check | | 44 | 819 |
| 21. | Statement | | 91 | |
| 22. | Bill | | 91 | |
| 23. | Letter | | 195 | |
| 24. | | | | |
| 25. | Voucher | | 219 | |
| 26. | Envelope | | 225 | |
| 27. | | | | |
| 28. | Bill | | 237 | |
| 29. | Check | | 237 | |
| 30. | Cashier's copies of vouchers | | 264 | |
| 31. | Documents | | 299 | |
| 3522. | Slips | | 281 | |


## Index to Defendant's Exhibits:

## Index to Defendant's Exhibits:


| Ex. No. | Description | Marked | Pages Received | Printed |
|---|---|---|---|---|
| **** | | | | |
| C. | Bills for flowers | | 404 | |
| D. | Bill | | 437 | |
| **** | | | | |
| H. | Bills for flowers | | 404 | |
| **** | | | | |
| J thru R. | Photographs | | 315 | |
| S. | List of Items | | 145 | |
| **** | | | | |
| V. | Blanket slip for golf carts | | 354 | 820 |
| **** | | | | |
| FF. | Trophy | | 385 | |

## DOCKET ENTRIES, INDICTMENT NO. 75 Cr. 1010.

STATES DISTRICT COURT — CRIMINAL DOCKET

Felony X JUDGE Assigned Trial 0848
Misdemeanor 0208 1 Disp./Sentence
District Office

U. S. vs. GREENBERG, LEON defendant

Case Filed Day 22 Mo. 10 Yr. 75 Docket No. 1010
No. of 01 Defts.

CHARGES
18: Consp. to commit mail fraud. 1
18: Mail fraud. 2-5

MAGIS. CASE NO.

BAIL & RELEAS
Denied Personal
AMT Unsecured
Set (000) Conditional
$
State
Bail Not Made
Bail Status Changed (See Docket)

1/21/76

ORNEYS
T. Barry Kingham, AUSA. (212) 791-0039
Herold Price Fahringer, Esq. One Niagara Sq. Buffalo, N.Y.

| ARREST | INDICTMENT | ARRAIGNMENT | TRIAL | SENTENCE |
|---|---|---|---|---|
| U.S. Custody Began on Above Charges or | Information | Trial Set For | Voir Dire | Disposition |
| High Risk Defn. & Date Design'd | Waived | 1st Plea 11-5-75 | Not Guilty / Nolo / Guilty | Trial Began 11-5-75 |
| Superseding Indict/Info 10-22-75 | | Final Plea | Not Guilty / Nolo / Guilty | Trial Ended 11-11-75 |
| Prosecution Deferred | | | | Convicted / Acquitted / Dismissed: / Nolled/Discontinued |

1-21

| | | DATE | INITIAL/No. |
|---|---|---|---|
| Search Warrant | Issued | | |
| | Return | | |
| Summons | Issued | | |
| | Served | | |
| Arrest Warrant | | | |
| COMPLAINT | | | |
| OFFENSE (In Complaint) | | | |

INITIAL APPEARANCE — INITIAL/No.

PRELIMINARY EXAMINATION OR REMOVAL HEARING — Date Scheduled / Date Held
Waived / Not Waived
Intervening Indictment

Tape No. — INITIAL/No.

OUTCOME
Dismissed
Held for District GJ
BOND: Exon / To Tr Distr
Held to Answer to U. S. District Cou
AT:
Magistrate's Initials

• Show last names and suffix numbers of other defendants on same indictment/information

| DATE | PROCEEDINGS | V. Excludable (a) | (b) |
|---|---|---|---|
| 10-22-75 | Filed indictment. (Referred to Judge Pollack as a related and superseding 75 Cr 532. | | |
| 11-05-75 | Filed letter from T. Kingham to H. Fahringer re: 3500 materials. | | |
| 11-05-75 | Deft. (atty. Herald Price Fahringer present) pleads not guilty | | |
| 11-5-75 | Jury trial begun before Judge Pollack. | | |
| 11-6-75 | Trial cont'd. | | |
| 11-7-75 | Trial cont'd. | | |
| 11-10-75 | Trial cont'd. | | |
| 11-11-75 | Trial cont'd. and concluded. Deft. found guilty as charged. P.S.R. ordered. Deft. surrender his passport to Mr. Fahringer, defense atty. For sentence 1-14-76 at 9:45 A.M., room 905. Deft. to submit written motions. Pollack,J. | | |
| | Filed transcript of record of proceedings, dated Nov 5, 6, 7, 10, 11, 1975 | | |
| 01-21-76 | Filed deft.'s notice of appeal from judgment of 1-21-76. Mailed copies to U.S. Atty. & deft. | | |

BEST COPY AVAILABLE

*DOCKET ENTRIES, INDICTMENT NO. 75 Cr. 1010.*

| DATE | IV. PROCEEDINGS (continued) | V. EXCLUDABLE DELAY (a) (b) (c) (d) |
|---|---|---|
| 01-21-76 | Filed Judgment (atty. Present) The imposition of sentence of imprisonment only on each of counts 1,2,3,4 and 5 is suspended. Deft. is placed on Probation for a period of 2 yrs., subject to the standing probation order of this Court. -AND- FINED $1,000. on each of counts 2,3,4, and 5; FINED $5,000. oncount 1; (Total fines $9,000.) and deft. is is ordered to pay the costs of the prosecution pursuant to T. 28,U.S.C. Sec. 1918(b), the amount to be determined in accordance with law and entered hereon subject to the Court's approval, and paid within 60 days after such entry. Payment of fines is to be made within sixty(60) days hereof or deft. is to be committed until the fines are paid or he is otherwise discharg according to law. Pollack,J. issued all copies. | |
| 2/2/76 | Filed transcript of proceedings dated 1/21/76. | |

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [signature] Deputy Clerk

| DATE | IV. PROCEEDINGS (continued) #76,076 | V. EXCLUDABLE DELAY (a) (b) (c) (d) |
|---|---|---|
| 01-21-76 | Filed Judgment (atty. Present) The imposition of sentence of imprisonment only on each of counts 1,2,3,4 and 5 is suspended. Deft. is placed on Probation for a period of 2 yrs., subject to the standing probation order of this Court. -AND- FINED $1,000. on each of counts 2,3,4, and 5; FINED $5,000. oncount 1; (Total fines $9,000.) and deft. is is ordered to pay the costs of the prosecution pursuant to T. 28,U.S.C. Sec. 1918(b), the amount to be determined in accordance with law and entered hereon subject to the Court's approval, and paid within 60 days after such entry. Payment of fines is to be made within sixty(60) days hereof or deft. is to be committed until the fines are paid or he is otherwise discharged according to law. Pollack,J. issued all copies. | |
| 01-28-76 | Filed deft.'s notice of motion for stay of sentence pending appeal. | |
| 01-28-76 | Filed memo-end. on motion docketed this date judgment stayed pending appeal to the court of appeals. Pollack,J. m/n | |
| 2/2/76 | Filed transcript dated 1/21/76 | |
| 2-9-76 | Filed deft's requested Jury Instructions. | |

(a) Interval (per Section II) (b) Start Date / End Date (c) Ltr Code (d) Total Days

DOCKET ENTRIES, INDICTMENT NO. 75 Cr. 532.

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev. JUDGE POLLACK 75 CRIM. 532.

| TITLE OF CASE | ATTORNEYS |
|---|---|
| THE UNITED STATES | *For U. S.:* |
| vs. | T. Barry Kingham, AUSA. 791-9155 |
| LEON GREENBERG | |
| | *For Defendant:* Herald Price Fahringer 1 Niagara Sq. Buffalo, N.Y. (716) 849-1328. |

| 5) STATISTICAL RECORD | COSTS | | DATE | NAME OR RECEIPT NO. | REC. | | DISB. | |
|---|---|---|---|---|---|---|---|---|
| J.S. 2 mailed | Clerk | | | | | | | |
| J.S. 3 mailed ✓ | Marshal | | | | | | | |
| Violation | Docket fee | | | | | | | |
| Title 18 | | | | | | | | |
| Sec. 371,1341 | | | | | | | | |
| nsp. to commit mail fraud.(Ct.1) | | | | | | | | |
| il fraud.(Cts.2-5) | | | | | | | | |
| ( Five Counts) | | | | | | | | |

| DATE | PROCEEDINGS |
|---|---|
| 1-3-75 | Filed Indictment. |
| 1-16-75 | Deft.(atty. present) Pleads not guilty. Ordered photographed and fingerprinted. Deft. released in custody of attorney Mr. Fahringer. Case assigned to Judge Pollack for all purposes. Gagliardi,J. |
| 1-23-75 | Filed notice of appearance of atty. for deft. |
| 2-1-75 | Filed deft.'s Omnibus motion and brief. |
| 2-1-75 | Filed MEMORANDUM attached to motion docketed this date."The motions are disposed of as follows: Discovery is ordered to the extent agreed upon in the conference with counsel. A Bill of Particulars as to times of events is granted to the extent of furnishing approximate dates and times. The government is to furnish the discovery and particulars allowed by 9-1-75. All motions herein set forth are otherwise denied. The trial of this indictment is set for 10-28-75 to which counsel have agreed.Pollack,J.m/n |

*DOCKET ENTRIES, INDICTMENT NO. 75 Cr. 532.*

Page 2 Judge Pollack 75 Cr. 532

| DATE | PROCEEDINGS |
|---|---|
| 08-06-75 | Filed transcript of record of proceedings dated. 6-16-75. |
| 11-10-75 | Entered and filed nolle prosequi. Pollack,J. |

INDICTMENT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA :

-v- : INDICTMENT

LEON GREENBERG, : S 75 Cr.

Defendant. :

---

The Grand Jury charges:

INTRODUCTION

1. The defendant LEON GREENBERG was, at all times relevant to this indictment, President and a member of the board of directors of the Sullivan County Harness Racing Association, Inc. ("Raceway"), ar General Manager of the Monticello Raceway, which was operated by said corporation in Monticello, New York.

2. Co-conspirator Paul Grossinger was, at all times relevant to this indictment, President of S & P Grossinger, Inc., which operated The Grossinger, a hotel in Grossinger, New York. At all times relevant to this indictment until April 17, 1974, co-conspirator Paul Grossinger was also a member of the board of directors of the Raceway.

3. Co-conspirator Bernard Roth was, at all times relevant to this indictment, employed by The Grossinger as comptroller.

4. On or about November 7, 1970, a Bar Mitzvah and reception were held at The Grossinger for Leon Greenberg's son, at a cost to The Grossinger of approximately $5,843.25.

COUNT ONE

The Grand Jury further charges:

OBJECT OF THE CONSPIRACY

5. From on or about August, 1970, up to and including the date of the filing of this indictment in the Southern District of New York and elsewhere, LEON GREENBERG, the defendant, and Paul Grossinger and Bernard Roth, named herein as co-conspirators and not as defendants, and others to the Grand Jury known and unknown, combined, conspired, confederated and agreed together and with each other to defraud the Raceway and to violate Section 1341 of Title 18, United States Code.

MEANS OF THE CONSPIRACY

6. Among the means whereby the defendant LEON GREENBERG and his co-conspirators would and did accomplish the object set forth in paragraph 5 of this indictment were the following:

(a) On or about September 30, 1970, at the direction of the defendant LEON GREENBERG and his co-conspirator Paul Grossinger, co-conspirator Bernard Roth prepared and mailed fictitious bills in the total amount of $4,856.16, to the Raceway for horsemen's outings at

The Grossinger in July and August 1970, which outings, as the defendant and his co-conspirators then and there well knew, had not taken place.

(b) On or about October 29, 1970, the defendant LEON GREENBERG signed and caused to be mailed to The Grossinger a check drawn on a bank account of the Sullivan County Harness Racing Association, Inc. in the amount of $4,856.16, in payment for the above-mentioned horsemen's outings which he then and there well knew had not taken place.

(c) On or about April 6, 1971, the defendant LEON GREENBERG and his co-conspirator Paul Grossinger instructed co-conspirator Bernard Roth to reduce by $4,856.16 the amount which the defendant personally owed The Grossinger for the cost of his son's Bar Mitzvah and reception, and to credit to the defendant LEON GREENBERG's personal bill the amount of $4,856.16 which had been paid by the Raceway to The Grossinger for the fictitious horsemen's outings.

(d) On or about April 8, 1971, co-conspirator Bernard Roth caused to be mailed to the defendant LEON GREENBERG a statement from The Grossinger for the balance due for the Bar Mitzvah and reception in the amount of $987.09, which statement reflected a reduction of the $5,843.25 cost of the Bar Mitzvah and reception by the amount of $4,856.16, which had been paid by the Raceway to The Grossinger for the fictitious horsemen's outings.

(c) On or about July 13, 1971, the defendant LEON GREENBERG signed and caused to be mailed to The Grossinger a check drawn on his personal bank account in the amount of $987.09.

OVERT ACTS OF THE CONSPIRACY

7. In furtherance of, and to effect the objects of said conspiracy, the defendant LEON GREENBERG and his co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) In or about September 1970, the defendant LEON GREENBERG and his co-conspirator Paul Grossinger instructed co-conspirator Bernard Roth to prepare and mail false bills in the amount of $4,856.16 from The Grossinger to the Raceway.

(b) On or about October 29, 1970, the defendant LEON GREENBERG signed and caused to be mailed to The Grossinger a check drawn on a bank account of the Sullivan County Harness Racing Association, Inc. in the amount of $4,856.16.

(c) On or about April 6, 1971, the defendant LEON GREENBERG caused a letter to be mailed to Paul Grossinger requesting verification of the amount of the bill sent to the defendant by The Grossinger for the defendant's son's Bar Mitzvah.

(d) On or about April 6, 1971, the defendant LEON GREENBERG and his co-conspirator Paul

Grossinger instructed co-conspirator Bernard Roth to reduce by $4,856.16 the amount which the defendant personally owed to The Grossinger for the cost of his son's Bar Mitzvah.

(e) On or about July 12, 1971, the defendant LEON GREENBERG signed and caused to be mailed to The Grossinger a check in the amount of $987.09 drawn on his personal bank account.

(f) On or about April 17, 1974 co-conspirator Paul Grossinger caused a letter and certified check in the amount of $4,856.16 to be mailed from The Grossinger to the Raceway.

STATUTORY ALLEGATIONS

8. It was further a part of said conspiracy that the defendant LEON GREENBERG and his co-conspirators would and did devise and intend to devise a scheme and artifice to defraud, and for obtaining money and property be means of false and fraudulent pretenses, representations and promises and that for the purpose of executing said scheme and artifice to defraud and attempting so to do they would use and cause to be used the United States mails.

(Title 18, United States Code, Section 371)

COUNTS TWO THROUGH FIVE

The Grand Jury further charges:

9. Each and every allegation of the Introduction and Count One of this indictment is hereby

repeated, realleged and incorporated by reference in Counts Two through Five of this indictment as though fully set forth therein.

10. On or about the dates hereinafter set forth, in the Southern District of New York and elsewhere, the defendant LEON GREENBERG and Paul Grossinger and Bernard Roth, not named as defendants herein, and other persons known and unknown to the Grand Jury, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent representations and promises, as set forth in the Introduction and Count One of this indictment, and for the purpose of executing said scheme and artifice and attempting so to do, did place and cause to be placed in post offices and authorized depositories for mail matter, and did cause to be delivered by mail according to the directions thereon, certain mail matter to be sent and delivered by the United States Postal Service, as hereinafter set forth:

| COUNT | DATE | DESCRIPTION | ADDRESSEE |
|---|---|---|---|
| 2 | Sept. 30, 1970 | Grossinger bills for $4,856.16 | Monticello Raceway Route 17 and 17-B Monticello, New York Attn: Mr. Leon Greenberg |
| 3 | Oct. 29, 1970 | Raceway check for $4,856.16 | The Grossinger Grossinger, New York |

| COUNT | DATE | DESCRIPTION | ADDRESSEE |
|---|---|---|---|
| 4 | April 6, 1971 | Letter from Leon Greenberg | Paul Grossinger The Grossinger Grossinger, N.Y.12734 |
| 5 | July 12, 1971 | Leon Greenberg's personal check for $987.09 | The Grossinger Grossinger, New York |

(Title 18, United States Code, Sections 1341 and 2.)

FOREMAN

PAUL J. CURRAN
United States Attorney

# NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA

v.

LEON GREENBURG

Docket Number 75 CR [redacted] 1010

Honorable Milton Pollack

(District Court Judge)

## NOTICE OF APPEAL

Notice is hereby given that Leon Greenburg appeals to the United States Court of Appeals for the Second Circuit from the ☑ Judgment ☐ order ☐ other (specify) of conviction entered in this action on January 21, 1976 (Date)

(Counsel for Appellant)

Date 11/18/75

To: U.S. Attorney
Henry H Kingham
1 St. Andrews Plaza
Leon Greenberg
Monticello, N.Y.

Address Herald Price Fahringer, Esq.
One Niagara Square
Buffalo, New York 14202
(716) 349-1333
(212) 355-4951

Phone Number

ADD ADDITIONAL PAGE IF NECESSARY

BEST COPY AVAILABLE

**NOTICE OF MOTION, dated 7-14-75.**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEON GREENBERG,

Defendant

---

Indictment
No. 75-CR.532

---

NOTICE OF MOTION

---

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affirmation of HERALD PRICE FAHRINGER, duly sworn to on the 14th day of July, 1975, and upon the indictment, and all the other proceedings heretofore had herein, the undersigned will move this court on behalf of the defendant at a Cri...inal Term thereof to be held in the United States Courthouse for the Southern District of New York at Foley Square, New York, New York, at a time and place to be fixed by the court, for orders granting the following relief:

*NOTICE OF MOTION, dated 7-14-75.*

a. Discovery and Inspection pursuant to Rule 16 of the Federal Rules of Criminal Procedure.

b. Delivery to the defendant of all evidence favorable to him under the authority of Brady v. Maryland, 373 U.S. 83.

c. A bill of particulars pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure.

d. A hearing to determine the admissibility of any statements taken from the defendant, and a motion to suppress them in the event they were illegally acquired.

e. A hearing to determine the admissibility of evidence, unlawfully acquired and an order suppressing that evidence.

f. An order granting disclosure of certain information pertaining to the grand jury proceedings.

g. An order requiring the government to disclose the existence of and/or use of government informants.

h. An order dismissing the indictment because the counts are multiplicitous.

i. An order dismissing the indictment pursuant to Rule 12 of the Federal Rules of Criminal Procedure on the grounds that it is insufficient as a matter of law.

j. An order dismissing the indictment on the grounds that the grand jury proceedings were tainted by irregularities.

*NOTICE OF MOTION, dated 7-14-75.*

k. An order dismissing the indictment because §1341 of Title 18 is unconstitutionally applied in this case.

l. An inspection of the grand jury minutes pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure, and dismissal of the indictment based upon such inspection.

m. An order dismissing the indictment because the defendant's privilege against self-incrimination was violated before the grand jury.

n. An order granting such other and further relief as is just under all of the circumstances.

Dated: Buffalo, New York
July 14, 1975

Yours, etc.

HERALD PRICE FAHRINGER, ESQ.
Attorney for the Defendant
One Niagara Square
Buffalo, New York 14202
(716) 849-1333

TO: PAUL J. CURRAN,
United States Attorney,
BARRY KINGHAM,
Assistant United States Attorney
United States Court House
Foley Square
New York, New York

**AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEON GREENBERG,

Defendant

---

Indictment
No. 75-CR.532

---

STATE OF NEW YORK )
) ss:
COUNTY OF ERIE )

HERALD PRICE FAHRINGER, an attorney at law, under penalty of perjury affirms the following:

1. I am an attorney at law duly licensed to practice in the State of New York and I am a member of the law firm of Lipsitz, Green, Fahringer, Roll, Schuller & James with offices at One Niagara Square, Buffalo, New York 14202.

2. I represent the defendant, Leon Greenberg, and I am thoroughly familiar with the facts and circumstances surrounding this case by reason of my own investigation and interviews had

with other persons who have furnished me with information about the events described in the indictment. Since there is a long history to this case, we have divided the various branches of this motion under appropriate subheadings.

The Indictment

On June 3, 1975, a five-count indictment was returned against Leon Greenberg charging him with conspiracy in violation of §371 of Title 18 and four counts of mail fraud in violation of §1341 of Title 18. Essentially the indictment alleges that a bar mitzvah held at Grossinger's Hotel, in the Catskills, on November 6, 1970, was unlawfully paid for by The Sullivan County Harness Racing Association, Inc. (Monticello Raceway) in the amount of $5,843.25. We have summarized the indictment in outline form for the Court's convenience.

Count One

Count One charges that Leon Greenberg, President of the Monticello Raceway, conspired with Paul Grossinger, President of S & H Grossinger, Inc., and Bernard Roth, Comptroller of Grossinger's, to defraud the Monticello Raceway by having it pay for a portion of Leon Greenberg's son's bar mitzvah, in violation of §371 of Title 18.

*AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.*

Count Two

On September 30, 1970, Bernard Roth mailed allegedly false bills in the amount of $4,856.16 from Grossinger's to the Monticello Raceway to the attention of Mr. Leon Greenberg, in violation of §1341 of Title 18.

Count Three

On October 20, 1970, a check in the amount of $4,856.16, signed by Leon Greenberg, drawn on the account of Sullivan County Harness Racing Association, Inc., was sent to Grossinger's, in violation of §1341 of Title 18.

Count Four

On April 6, 1971, Leon Greenberg sent a letter to Paul Grossinger inquiring about the bill sent to him by Grossinger's for his son's bar mitzvah, in violation of §1341 of Title 18.

Count Five

On July 3, 1971, Leon Greenberg sent a personal check in the amount of $987.09 to Grossinger's, in violation of §1341 of Title 18.

A copy of the indictment is attached and marked Exhibit A.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

The Arraignment

On June 16, 1975, Leon Greenberg was arraigned in the United States District Court for the Southern District of New York in Room 506 and entered a plea of not guilty and reserved his right to make any and all motions addressed to the propriety of the proceedings against him. He was released on his own recognizance and the case was assigned to this Court for disposition.

Leon Greenberg's Background

Leon Greenberg is 49 years old, married, and has two children. In 1949, he graduated from Brooklyn Law School and was admitted to the bar of the State of New York. In 1954, he became an Assistant District Attorney in Sullivan County and in three years established himself as an outstanding public prosecutor.

In 1957 he became attorney for the Monticello Raceway which commenced operations on June 27, 1958. In 1953 he became Administrative Vice President and on May 1, 1968 he was elected President of the Monticello Raceway. During the past seven years he has served the Raceway as its President in a superlative fashion.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

The Bar Mitzvah

In 1970 Paul Grossinger approached the defendant Leon Greenberg and asked him to have his son's upcoming Bar Mitzvah at Grossinger's Hotel. During the month of October the Comptroller of Grossinger's sent to the Monticello Raceway a number of bills covering horsemen's outings in the amount of $4,856.16. The government claims that these bills were fictitious in that no outings took place. On October 29, 1970 the Raceway paid these horsemen's bills in the amount of $4,856.16.

Andrew Greenberg's Bar Mitzvah was held on November 7, 1970 and Leon Greenberg was subsequently billed in the amount of $5,843.25. On April 6, 1971 the defendant sent a letter to Paul Grossinger inquiring simply:

> "Would you please verify the correctness of this bill?"

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

As a result, Grossinger sent to the defendant a statement indicating that the total obligation for the Bar Mitzvah was $987.09 which apparently represents the amount of the original bill less the amount of the bill for the horsemen's outings. On July 13, 1971 the defendant sent his check for $987.09 to Grossinger's in payment of that bill.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

History of the Case

This case has an important history which must be fully disclosed in these proceedings because of a number of constitutional complaints raised in these motions. In January of 1974, the New York State Organized Crime Task Force (the Task Force), acting under the authority of Executive Law §70(a), launched an investigation into the running of superfecta races at the Monticello Raceway. Evidently nothing was found amiss in this area of inquiry because no indictments were ever returned accusing anyone of any misconduct concerning the handling of the superfecta races. When this phase of the investigation failed, the Task Force turned on the Raceway's president, Leon Greenberg, and began looking into his personal affairs.

On April 19, 1974 the Task Force seized virtually all the Raceway's records and subpoenaed a number of its directors, requiring them to produce records relating to transactions of the president. These records were ultimately retained by the Task Force under a representation later judicially determined as misleading. A portion of the records seized and unlawfully retained by the Task Force related to the financing of the bar mitzvah which is the subject of this indictment.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

In June of 1974, counsel for the Raceway moved to quash the subpoenas used to acquire a part of these records and sought the return of those unlawfully acquired. These issues were fully argued and briefed before the Honorable Harold J. Hughes of the Albany County Supreme Court during the months of July and August of 1974.

On September 25, 1974, Justice Hughes quashed the subpoenas and in an unimpeachable opinion concluded that the Organized Crime Task Force had no authority to conduct this investigation.

Previously on July 31, 1974, Justice Hughes signed an order directing the return of the Raceway records on the grounds they were improperly acquired by the Task Force. The State applied for a stay of this order and further litigation was avoided by a stipulation between the Task Force and the Raceway that the records could remain in the possession of the former but would be sealed and no further use would be made of them until the issues

relating to the subpoenas were fully resolved. A copy of that decision is attached as Exhibit B.

As indicated, on September 25, 1974 Justice Hughes concluded that the Task Force had no authority to investigate the affairs of the Raceway and quashed their process. On May 29, 1975, the Appellate Division Third Department, unanimously affirmed both these judgments of Judge Hughes. Attached is a copy of the Appellate Divisions's opinion marked Exhibit B.

Federal Intervention

Upon information and belief, when the Task Force learned that its investigation of the Monticello Raceway could not go forward because it was unauthorized, it conferred with the federal authorities in New York City and disclosed to them the nature and extent of its investigation. As a consequence, on October 26, 1974, a federal grand jury subpoena was served on the Monticello Raceway seeking virtually the same records that the State had unlawfully seized. The Raceway moved to quash the grand jury subpoena and that matter came on to be heard in the early part of November 1974,

before the Honorable John M. Cannella sitting in the United States District Court for the Southern District of New York.

On or about November 13, 1974 he ordered that the subpoena be modified but that the Raceway make available certain records for inspection to the investigators of the United States Attorney's office of the Southern District of New York. During the course of those arguments, the government was advised that a large portion of the records it sought had been impounded by the Task Force and was presently subject to the litigation heretofore referred to. The government then applied to the Appellate Division, Third Department, and secured an order allowing it to use the records in the custody of the Task Force which were ultimately determined to have been illegally acquired. Before the government used these records, Judge Hughes had determined that they had been illegally acquired from the Raceway. This evidence and other proof illegally acquired by the Task Force were exploited by the government in securing this indictment against Leon Greenberg.

*AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.*

Additional facts relating to these events are developed under the branch of these motions dealing with the use of unlawfully acquired evidence by the government.

As indicated earlier, after eight months of investigation, an indictment was returned against Leon Greenberg charging him with mail fraud in connection with the raceway's payment of his son's bar mitzvah on November 7, 1970.

Discovery and Inspection

1. Pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure, the defendant seeks an order compelling the government to allow his counsel to inspect, copy or photograph any written or recorded statements, admissions or confessions alleged to have been made by him, or any summaries, synopses, notes, memoranda or resumes of such statements, regardless of whether such statements were reduced to writing or will merely be testified to by a witness for the government. In particular the defendant requests a copy of the transcript of his testimony given before the grand jury on or about May 22, 1975.

*AFFIRMATION OF HERALD PRICE FAHRINGER II SUPPORT OF MOTION.*

2. All requests for information contained in any part of this omnibus motion are meant to include any materials known to be in the possession, custody or control of the government or any of its agencies, or information the existence of which should be known by the government through the exercise of due diligence. All requests for information include that which was acquired either by the Federal or State government or any other persons acting on its behalf.

3. The defendant further seeks any stenographic, mechanical, electrical or other recording or transcription of any such statement which is a substantially verbatim recital of an oral statement made by the defendant to any agent of the government, whether state or federal and recorded contemporaneously with the making of the statement.

4. The government is reminded of its continuing duty to supply any such statements which may come into its possession or come to its attention and the defendant requests that such material be supplied at the time of its acquisition.

*AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.*

5. The defendant requests that the government disclose any and all reports of the results of any scientific tests or experiments made in connection with the investigation of this case. This demand includes, but is not limited to, any voice recordings, handwriting exemplars, photographs, fingerprints, typewriter analysis or other such materials in the possession, custody or control of the government.

6. The defendant requests copies of the transcribed testimony of any and all of the witnesses who testified before the grand jury relative to this case.

7. The defendant requests an order compelling the government to permit the defendant to inspect, copy or photograph the following items, if they exist:

A. Any and all materials of whatever description charged under each count of the indictment including but not limited to the alleged bills, letters, invoices, and other documents which form the basis of each of the charges included in the indictment together with letters of enclosure and the envelopes used in the alleged mailing as described in the indictment. Specifically the defendant requests the

following documents and requests the government reveal whether these documents were presented to the grand jury that indicted Leon Greenberg:

(a) The alleged fictitious bills in the aggregate amount of $4,586.16 claimed to have been mailed by Bernard Roth on September 30, 1970, together with the letters of enclosure and the envelope or envelopes which were used in the mailing.

(b) The check drawn by Leon Greenberg drawn on the account of the Sullivan County Harness Racing Association, Inc., in the amount of $4,856.16 dated October 29, 1970.

(c) The record or records of the Grossinger Hotel showing the reduction of their account listed under Leon Greenberg in the amount of $4,856.16 and any notes or other documents relating to that entry alleged to have been made on April 6, 1971.

(d) The statement allegedly mailed on April 8, 1971 by Bernard Roth to Leon Greenberg in the amount of $987.09 showing the balance due on the bar mitzvah, together with the envelope and letter of enclosure.

(e) The check signed by Leon Greenberg drawn on his personal account in the amount of $987.09 dated July 13, 1971, mailed to Grossinger's together with the envelope, letter of enclosure and any other document that accompanied it.

(f) The letter alleged to have been mailed by Leon Greenberg to Paul Grossinger requesting the verification of the amount of the bill sent to him by Grossinger's for his son's bar mitzvah together with any supporting papers, envelopes, notes or other entries from Grossinger's.

(g) Any documents, records, notes or memoranda made by Paul Grossinger or Bernard Roth or their agents, employees, or other persons acting under their supervision, relating in any fashion to any of the events, transactions, meetings or conversations described in the indictment of Leon Greenberg

B. Paul Grossinger - The defendant requests the following information and materials relating to Paul Grossinger:

(a) The date or dates that Paul Grossinger met with the Organized Crime Task Force of the State of New York and either furnished it with statements or testimony under oath.

(b) Any and all memoranda or information relating to contacts or conversations between the Organized Crime Task Force and the U.S. Attorney's office of the Southern District of New York or any of their agents and the dates those conversations or contacts took place.

(c) Copies of all statements, notes, memoranda, or testimony given by Paul Grossinger to the Organized Crime Task Force, the U.S. Attorney's Office, or the grand jury relating in any fashion or way to the matters described in the indictment of Leon Greenberg.

(d) Copies of any and all documents turned over to the U.S. Attorney's Office by Paul Grossinger or any of his agents or employees in connection with this investigation.

(e) Copies of any and all notes made by Barry Kingham or any other member of the United States Attorney's Office or any of its agents resulting from interviews with Paul Grossinger or his attorney, either Lazarus Levine or Wallace Musoff or any other lawyer or agent.

(f) Copies of any and all records, material, notes, memoranda derived in any fashion from the Organized Crime Task Force or any other law enforcement agency including, but not limited to the New York State Police, the New York Attorney General's Office, the District Attorney's office of Sullivan County, the Sullivan County Sheriff's Office or the Monticello Police Department.

C. Bernard Roth - the defendant requests all the materials and information relating to Bernard Roth in the same fashion as demanded in connection with Paul Grossinger.

D. Photographs - the defendant requests copies of any and all photographs, charts, diagrams, or any other illustrative materials showing scenes, places of meetings or any other area where it is claimed that the defendant met or spoke with any other person in connection with the charges enumerated in this indictment.

E. Exhibits - the defendant demands a copy of any document, paper, record or other tangible piece of evidence which the government plans to introduce against the defendant at his trial so that the authenticity of such evidence may be investigated in advance of trial. Since there is no danger of this evidence in any fashion being altered, this demand is most reasonable and does not in any way prejudice the government.

F. With respect to any items demanded by the defense which the court in its discretion may not allow disclosure of, it is respectfully requested that the Court, in the interests of justice, require of the government to disclose the existence of such items and supply copies to the Court, in camera, so that these materials and information may be preserved and their existence established.

G. It is further requested that pursuant to subdivision (e) of Rule 16, any disclosures made by the government in response to these demands be made solely to the court and defense counsel and that no information requested herein be made public or available to any other person.

*AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.*

H. The defendant specifically reserves the right to make any additional requests for material covered by Rule 16 at the time this motion is argued or ten days after the arraignment or at such other time as the existence of such information shall become known to counsel or the defendant and should be disclosed in the interests of justice.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

Brady Material

1. The defendant asks the Court to require the government to disclose any evidence in its possession "favorable" to the defendant including, but not limited to, any statements of witnesses or grand jury testimony; names of witnesses who have furnished favorable information to the government; documents; records; reports; photographs; or any other tangible items of evidence or information known to the government or any other governmental agency which is in any way favorable to the defendant under the authority of Brady v. Maryland, 373 U.S. 83.

It may be of some help to the government in reviewing its files to consider whether it has acquired any information from people like Paul Grossinger, Bernard Roth, or any persons connected with the Monticello Raceway indicating that the expenditure made by the Raceway covering the bar mitzvah was authorized or approved by the management of that company. For instance, agents of the Internal Revenue Service have been working on a civil tax investigation of

the Monticello Raceway, and therefore their records and reports should be checked to see if they have encountered any information or documents that would indicate that this expense covering the bar mitzvah had been approved or authorized by the management of the Raceway.

2. The principal impulse for the Brady rule grew out of the acknowledgment by the Supreme Court that a defendant's facilities for gathering evidence are disproportionate to that of the government. Since most defendants have neither the manpower nor the resources available to the government in its investigation of crime, the prosecution is obliged to share the proceeds of its discoveries with the defense where that evidence is favorable to the latter's cause. The duty of law enforcement agencies to conduct an impartial investigation and collect all the evidence relating to the commission of an offense is manifest. When a person is ultimately charged with a crime, the finding of the government should be just as available to him as to the prosecution. The government's responsibility to the defendant is no less than the duty it owes to any other member of society for the investigation of crime as designed not only to convict the guilty but to free the innocent.

3. It is imperative that any favorable evidence, especially any favorable testimony given by grand jury witnesses, be delivered to the defense before trial so that it might be effectively used. In order to effectively exploit any Brady material which may exist, it is essential that the defense be given this material far enough in advance of the trial so that other investigatory leads may be pursued in sufficient time to permit a full preparation of the defendant's case.

4. If the defendant is forced to wait until the time of trial to obtain this information it may be too late for him to effectively use it. It takes time to contact witnesses, interview them and arrange for their being subpoenaed to the trial. Therefore it is crucial that any evidence in the prosecution's file which is favorable to the defense be disclosed immediately so that arrangements can be made for those persons to be called during the course of this trial.

5. Any disclosures made under this request must be made without regard to whether or not the evidence divulged is admissible at the trial of this action. Accordingly, the

names and addresses of all witnesses either interviewed or contacted by the government which it either intends not to call or may not call should be disclosed to the defense so that these persons can be interviewed. Any statements taken from those witnesses should also be disclosed together with any evidence tending to affect the credibility of any witnesses which will be called by the prosecution. The government is called upon to disclose any promises of non-prosecution to any government witnesses or promises of immunity which may have been made to them.

6. In order to equitably implement this rule the prosecution's file should be produced in court and examined by the court and defense counsel so that a fair determination can be made of that material which is favorable to the defense. A decision of what favorable material exists in the prosecution's file cannot be left to the prosecution but must be supervised by the Court and defense counsel.

7. In the event this procedure is unacceptable then the prosecution's entire file should be delivered to the

Court so that a judicial investigation of those materials may be made objectively to determine what favorable material or information is in that file. The government's entire file should be marked as a Court Exhibit in the event the issues surrounding this application have to be reviewed.

*AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.*

Bill of Particulars

1. Pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, the defendant seeks an order compelling the government to file and serve upon the defendant a bill of particulars relating to the charges in the indictment and particularly furnishing the following details:

(a) State the times, places and dates where it is claimed the conspirators agreed with each other to violate Section 1341 of Title 18.

(b) State the exact time, date and place of the overt acts alleged in the indictment.

(c) State the names and addresses of any other alleged co-conspirators who have become known to the government since the filing of the indictment.

(d) State the exact date or approximate date when it is claimed by the government that the defendant became a member of this alleged conspiracy.

2. The information requested is not of an evidentiary nature, and without it, the defendant cannot adequately prepare or conduct his defense. This information is sought to clarify the indictment and is within the particular

knowledge of the United States Attorney or his witnesses, and cannot be obtained by any other means. At the time of the hearing of this motion, counsel may request other details relevant to this indictment, which may be necessary to adequately prepare a defense.

*AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.*

Grand Jury Proceedings

1. Since the Grand Jury proceedings are secret, counsel is handicapped in making certain claims about irregularities which may have occurred before that body. Thus, information is needed in order to advance these constitutional claims which, upon information and belief will be fully verified by a judicial investigation of the proceedings before the Grand Jury.

2. These requested disclosures will in no way impede or impair other Grand Jury investigations or prejudice the government. Indeed, these inquiries are mandated in order to implement certain rules of law relative to Grand Jury proceedings which have been developed and codified under Rule 6 of the Federal Rules of Criminal Procedure and as announced by recent decisions of the United States Court of Appeals for the Second Circuit and other appellate courts. Consequently, the defendant requests the following information:

(a) State whether the proceedings before the Grand Jury were stenographically transcribed in total, and if not, state what part or portion thereof was not transcribed.

(b) State whether the indictment in its final form was drafted by the United States Attorney's office before the Grand Jury voted on its return.

(c) State whether the indictment in its final form was exhibited or read verbatim to each of the grand jurors who voted to return it before the vote was taken.

(d) State whether a government agent summarized the testimony and/or evidence before the Grand Jury, or whether individual fact witnesses appeared before the Grand Jury and testified as to each of the necessary elements of the offenses charged.

(e) State whether each of the witnesses who testified before the Grand Jury testified solely on the basis of his own personal knowledge and, if not, state further (a) who it was gave the hearsay testimony; (b) the name of the person with the actual knowledge of the facts as to which the hearsay testimony was given; (c) the reason why the government failed to produce before the Grand Jury the person or persons with actual knowledge of those facts.

(f) If any of the witnesses called before the Grand Jury testified to circumstances or transactions about which he had no personal knowledge, state whether the Grand Jury was clearly advised that it was receiving only hearsay information (see United States v. Estepa, 471 F.2d 1132 [2d Cir. 1973]).

(g) State whether or not all of the grand jurors who voted to return the indictment were continuously present when all of the evidence underlying this indictment was presented.

(h) With respect to the above request, the defendant requests disclosure of the Grand Jury attendance records for each of the grand jurors during the time the present charges were being considered by the Grand Jury, specifically designating each member's attendance while evidence with respect to this particular case was being presented.

(i) State or set forth with respect to each count of the indictment the record of the Grand Jury vote maintained pursuant to Rule 6 of the Federal Rules of Criminal Procedure.

(j) State what, if any, legal advice was given to the Grand Jury by the United States Attorney, or by an attorney from the Department of Justice, or by the court, relating to the legal definition of conspiracy and a violation of Section 1341 of Title 18.

(k) State specifically whether such legal advice was recorded, and if a transcript thereof exists.

(l) Furnish a copy of the legal advice given to the Grand Jury.

3. After this information is disclosed to the defendant, counsel may move to dismiss the indictment based upon any irregularities which may have occurred before the Grand Jury.

*AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.*

4. Upon information and belief, there were occasions when the Assistant United States Attorney, Barry Kingham, interviewed witnesses who revealed to him information favorable to the defendant, but when those witnesses were called before the Grand Jury, the prosecutor did not elicit any of that favorable information from them. Thus favorable proof was not presented to the Grand Jury and only that evidence which incriminated the defendant was received by the grand jurors. Under the Brady doctrine this situation cannot be tolerated. It is respectfully requested that the Court conduct a hearing concerning these claims so that counsel may be allowed an opportunity to produce evidence by calling witnesses to support these claims. This grievance will be further verified by an inspection of the Grand Jury minutes. Thus, when these facts are fully established counsel will move for a dismissal of the indictment because of the prosecutor's failure to present all the relevant evidence bearing on the defendant's criminal liability to the Grand Jury.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

Government Informer

1. The defendant requests that the government disclose whether any government informers supplied evidence in any way relating to this case.

2. The defendant requests to know now whether there were any government informers, acting as agents of the government who were obtaining information concerning this alleged conspiracy and the alleged violations of §1341 and supplying it to the government, whether such informers were paid or unpaid, federal or state employees.

3. It may be that those government informers will not be used as witnesses in this case, but the defendant is entitled to know about the sources of this information because it may have led to other evidence which will be offered at the trial, or may have been contaminated by the illegal original source which the defendant has a right to challenge.

*AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.*

4. It is urged that this evidence may have been acquired in a way that violates the defendant's rights under the Fourth and Fifth Amendments to the United States Constitution.

5. So that there can be no mistake about the defendant's request herein, it is urged that under the decisional law of the United States Supreme Court, these defendants are entitled to have the government disclose whether any agent, employee, special employee or informer was at the direction of any federal law enforcement agency or state law enforcement agency used or instructed to gather evidence or information and/or to participate in any way in the activities which form the basis of this indictment. If such information was acquired through state agencies, the defendant is entitled to know.

6. In this regard, if such information was in fact acquired, it is respectfully submitted that a hearing is authorized to fully explore these violations of the defendant's constitutional rights.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

The Indictment's Insufficiency

1. The defendant urges that the indictment be dismissed under Rule 12(b)(2) on the grounds that the charges are insufficient as a matter of law and that Section 1341 is unconstitutionally applied in this case. It is clear from the facts recited in the indictment that the use of the mails was not an essential part of any alleged scheme to defraud in this case. Whether or not the mails were used was inconsequential.

2. In our case it is clear from a reading of the indictment that any use of the mails would have had to have occurred after the execution of an alleged scheme to defraud -- the truth of which we do not for a moment concede.

3. In other words, it is apparent from the language of the indictment that this alleged plan to defraud the Monticello Raceway in no way depended upon the use of the mail. The employment of the mails was never contemplated and was totally unnecessary to the government's theory of

fraud. Thus, both the substantive and conspiracy counts of the indictment must be dismissed as a matter of law.

4. More particularly, the third, fourth and fifth counts of the indictment do not involve any false or misleading documents whatsoever. For instance, the fifth count charges that on July 3, 1971, Leon Greenberg sent his personal check in the amount of $981.09 to Grossinger's to pay that part of the bill that everyone concedes he owed. Certainly on the very face of the indictment this count must be dismissed because the government cannot even claim that any part of that transaction was fraudulent.

5. Under the fourth count of the indictment, Leon Greenberg sent a letter to Paul Grossinger inquiring about the status of the account. Surely this letter was bona fide in every respect and cannot be claimed to be fraudulent.

6. Under the third count of the indictment, the Raceway check in the amount of $4,856.16 is in every sense genuine and, in any event, was returned to the Raceway by Paul Grossinger long before the indictment of the defendant.

*AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.*

7. Thus, on the very face of the indictment, each and every count of the indictment must be dismissed on the grounds that the use of the mail was not an essential element of any alleged scheme to defraud. In the case of counts 3, 4 and 5, there is absolutely no allegation in the indictment that even suggests that those instruments were in any way misleading or fraudulent.

*AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.*

The Counts of the Indictment Are Multiplicitous

1. The defendant moves pursuant to Rule 12 that the indictment be dismissed on the grounds that the four substantive counts are multiplicitous. It is clear from the indictment that there is charged one single scheme to defraud, the validity of which we do not for a moment concede. The government cannot multiply the counts in this indictment by charging that the subsequent mailings of a check, a letter, and an additional bill constituted separate crimes. In effect, the government has charged the same offense four separate times in complete derogation of the defendant's rights under the Fifth Amendment to be charged with a single offense in a single count and not be twice put in jeopardy.

2. Multiplicitous counts prejudice the defendant in the eyes of the jury by suggesting that he has committed multiple crimes and threaten the defendant with multiple punishment for a single offense. Thus, the indictment should be dismissed, or at the very least the Court should direct the government to elect to proceed on only one substantive count

*AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.*

Inspection of Grand Jury Minutes
Pursuant to Rule 6(e)

1. The defendant requests, pursuant to Federal Rule of Criminal Procedure 6(e), an order requiring the government to produce for inspection and copying the transcript of the testimony of all witnesses who appeared before the Grand Jury in connection with this indictment because this indictment was returned without any preliminary hearing having been afforded the defendant and purports to be based upon the testimony of persons who appeared and testified before the Grand Jury.

2. If the defendant had been afforded a preliminary hearing, he could have confronted his accusers and effectively shown a magistrate that there was no basis for the charges presently lodged against him. For this reason alone he should be allowed to inspect the Grand Jury minutes.

3. Furthermore, a preliminary investigation of these charges and an inspection of some of the documents involved in this case, reveal no legal evidence sufficient to

establish as a matter of law any crime. An inspection of the Grand Jury minutes will clearly show there is insufficient legal evidence to sustain the charges contained in this indictment.

4. Under all the circumstances of this case, an inspection of the Grand Jury minutes is absolutely necessary for the purpose of determining whether or not there was sufficient evidence adduced before that body to establish that the defendant was involved in the crime charged. In the alternative, if leave to inspect the Grand Jury minutes is denied, then the Court is respectfully requested to review the Grand Jury minutes in camera and dismiss the indictment because of insufficient evidence before that body.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

Illegally Seized Evidence

1. The indictment against the defendant must be dismissed because the bulk of the evidence supporting it was acquired from material illegally obtained by the State of New York. We have supplied the Court with the factual background of the misguided Task Force's investigation, which culminated in the evidence acquired being suppressed by reason of the Court's quashing the State's subpoenas.

2. After it had been determined by the Honorable Harold Hughes of the Supreme Court of Albany that there was no basis for the Organized Crime Task Force's investigation, the State turned over its evidence to the Federal government. For instance, the testimony of Paul Grossinger, taken under compulsion by the Task Force, is tainted by the illegality of the State's investigation and is contaminated.

3. The records unlawfully seized and used by the government, together with Paul Grossinger's testimony, improperly taken, form the very basis of this indictment. Since this proof was acquired illegally by the State and

in violation of the defendant's constitutional rights under the Fourth and Fifth Amendments of the United States Constitution, it must likewise be suppressed under the "silver platter" doctrine.

4. Upon information and belief, the Task Force, when it discovered that it would be unable to advance its investigation because of its misdeeds and lack of authority, turned over much information to the federal authorities and encouraged their launching an investigation which led to the indictment of the defendant.

5. This conclusion is supported by information reported in the New York Times of Wednesday, June 4, 1975, written by Edith Evans Asbury, in an article entitled "Greenberg Indicted on Charges of Defrauding Monticello Track." That article states:

> "Information uncovered by the New York State Organized Crime Task Force under the direction of Assistant Attorney General William N. Tendy in White Plains, also led to the indictment. Tendy said he had been investigating 'the racing situation' at Monticello Raceway for a year and a half, and was continuing to do so."

A copy of that news article is attached as Exhibit C. See also the Middletown Times Herald Record article of June 4, 1975, Exhibit D herein, showing a picture of the State Police with the prosecution.

6. Accordingly, under the well settled authority of this Circuit, the evidence acquired by the government from the State must be suppressed and the indictment should be dismissed.

7. Under this branch of our motion the defendant re-asserts his demand for information disclosing the use of any electronic surveillance eavesdropping or wire taps to obtain information from him or any persons with whom he has talked. This demand includes any such surveillance activity conducted by any law enforcement agency, whether state or federal, which may have come to the attention of the government.

8. The defendant requests that any order or affidavit used to secure such information under 18 U.S.C. §§2510 et seq. be disclosed to his counsel. If there was such electronic surveillance, the defendant intends to move

to suppress that evidence or any leads obtained from it on the grounds that it was unconstitutionally acquired. However, such motion will have to await the government's response to this demand.

9. Likewise, if any searches were conducted of the defendant's property, papers or records, either with or without a search warrant, that information must be disclosed in order that the defendant might move to suppress evidence acquired in that fashion.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION***

Violation of the Defendant's Privilege Against Self-Incrimination

1. On or about May 8, 1975, the defendant received a subpoena requiring him to appear on May 15th before the Federal Grand Jury sitting in the Southern District of New York which ultimately indicted him. I was engaged in a trial in the United States District Court for the Western District of New York in the case of United States v. Gerald DePasquale et al. before the Honorable John Curtin. Accordingly, I requested an adjournment, but the Assistant United States Attorney would only delay the case for one week until May 22nd.

2. On May 22, 1975, the defendant appeared with his corporate counsel, John S. McBride, and sought an adjournment in order to have counsel of his choice represent him before the Grand Jury. This request for an adjournment was rejected and thereafter the Assistant United States Attorney was advised that if the defendant was forced to appear before the Grand Jury he would have no choice, acting on the advice of his counsel, but to invoke his privilege against self-incrimination.

3. The Assistant United States Attorney, knowing that the defendant would invoke his privilege before the Grand Jury, still forced him to appear before that body and take the Fifth Amendment. Thus, the defendant's privilege against self-incrimination was flagrantly violated to his grave prejudice and the Grand Jury was unduly influenced by this serious infringement of a constitutional right.

4. It is undisputed that when the defendant was called before the Grand Jury he was in every sense of the word a target or potential defendant in that investigation. We expect to show that the indictment was already prepared or in the process of being prepared when he was called before the Grand Jury. Forcing the defendant to invoke his privilege against self-incrimination, which is always misunderstood by lay-people as an admission of guilt, irreparably prejudiced him before that body and virtually guaranteed an indictment against him.

5. A grand jury has as one of its purposes keeping citizens secure from public accusation of crime and from the trouble, expense and anxiety of a public trial before

probable cause is established by an indictment. Its essential purpose is to provide some security to all men against unjust, hasty and oppressive prosecutions. The impartiality of a grand jury must be preserved at all costs. Thus, the prosecutor must do nothing before that body which jeopardizes the spirit of that impartiality and thus prejudices a potential defendant.

6. By way of example, in the course of a trial, the prosecutor cannot compel a defendant to take the stand and invoke his privilege against self-incrimination because the cost of availing himself of that right is the adverse impact on the jury and a probably conviction. The reasons which compel avoiding that harm before a trial jury pertain as well to a grand jury.

7. Grand jurors, like trial jurors, are supposed to impartially determine the issues involved in a criminal investigation. However, compelling the very subject of the grand jury's investigation (or what may be worse a person who has already been determined to be a defendant in a proposed indictment) to appear before that body and to

invoke his privilege against self-incrimination virtually guarantees his indictment in the same manner as forcing a defendant in his criminal trial to take the Fifth Amendment would ensure his conviction.

8. A much more sensible rule, and the one which should have been followed in this case, is that once the government learns that a defendant is going to invoke his privilege before a grand jury and will not testify, he should be excused. If the good faith exercise of that privilege is to be challenged, the challenge should be made before a judicial officer who can best resolve that dispute. If the Court should determine the defendant must testify because the privilege is unavailable to him, he may then be required to return to the grand jury and give evidence. On the other hand, if his privilege against self-incrimination is sustained, there is no reason for him to return to the grand jury room, and he should be excused. Since the defendant's privilege against self-incrimination was flagrantly violated in this instance, causing his indictment, the charges against him should be dismissed. In the alternative, a hearing should be conducted to fully investigate all the facts surrounding these claims.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

Abuse of Grand Jury Process

The Grand Jury process concerning this case was abused to the defendant's detriment and thus the indictment must be dismissed. As indicated earlier in this motion, in October of 1974 the United States Attorney's Office launched an investigation into the affairs of the Monticello Raceway. The investigation was comprehensive and included an inquiry into the taxes reported both by the Raceway and its President. This investigation lasted for approximately nine months and on June 3, 1975 an indictment was returned against the defendant. During the course of this investigation virtually all of the Raceway's books and records were produced, including its tax returns, so that a full assessment of the Raceway's tax profile could be properly evaluated by the Grand Jury. Thus, the Grand Jury looked into the reporting of taxes by both the Raceway and its President, Leon Greenberg. For that matter, the U.S. Attorney was fully aware of the Bar Mitzvah transaction during the fall of 1974 and had obtained the Raceway's records relating to that expenditure.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

On June 16, 1975, Leon Greenberg was arraigned as indicated, in the United States District Court for the Southern District of New York before the Honorable Lee P. Gagliardi. At that time, during the course of applying to the court that the defendant be released in his attorney's custody, a statement was made indicating that the Raceway's expenditures were authorized by the Board of Directors. Barry Kingham, the Assistant United States Attorney in charge of this case, was present at that time and heard this remark. The very next day subpoenas were issued for each member of the Board of Directors and the former directors of the Raceway compelling them to appear before a grand jury in the Southern District of New York.

When the investigators acting on behalf of the United States Attorney served the subpoenas upon each of the directors or former directors, they were asked, specifically what they knew about the "authorization of the corporate expenditures for the Bar Mitzvah". Upon information and belief, no other questions were asked of the directors or the former directors.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

The Motion to Quash

All the directors, and former directors of the Raceway were subpoened on the 17th, 18th and 19th of June, 1975. On June 22, 1975, the Honorable Henry F. Werker of the United States District Court for the Southern District of New York signed an order requiring the U.S. Attorney to show cause on the following day, June 23, why the subpoenas should not be quashed. The witnesses complained, along with Leon Greenberg, that the service of these subpoenas was an abuse of process and was designed to unlawfully discover evidence relating to a pending criminal case.

The matter came on for argument before the Honorable Whitman Knapp and he ordered that the crucial issues presented by that application be fully briefed.

During the course of the argument before Judge Knapp, the government was forced to admit that the normal

procedures followed in a tax investigation were not being employed. Ordinarily, before anyone is called before a grand jury concerning a tax investigation, a full inquiry is conducted by the Internal Revenue Service. That agency then submits a report to the Justice Department in Washington, who in turn recommends that the case be presented to a grand jury in the taxpayer's filing district.

These undisputed facts led to the irresistable conclusion that the grand jury process was being abused for the sole purpose of dragging these witnesses before a grand jury in order to unlawfully interrogate them about Leon Greenberg's defence in his pending criminal action.

On July 2nd, 1975 the matter came on before the Honorable Robert L. Carter of the United States District Court for the Southern District of New York and the matter

was subsequently adjourned to July 8, 1975 for the purposes of conducting a hearing. At that time counsel offered to call the investigators who served the subpoenas to show that they were only interested in the authorization of the Bar Mitzvah. Furthermore, counsel asked Judge Carter to read the grand jury testimony of two directors or former directors of the Raceway, David Levinson and Emanuel Rosenstock. The Court was advised that a reading of the testimony of these two witnesses would show conclusively that the only interest the U.S. Attorney had was inquiring about the defence of authorization. The Court denied the petitioners the right to call these witnesses, who were present in court at the time, and insisted that the directors themselves would have to take the stand and testify. Counsel felt the Court had no right to insist upon determining what witnesses should be called in such a hearing and declined to call the petitioners for a number of reasons. Judge Carter denied the hearing and refused to quash the subpoenas over defence counsel's objection.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

On July 10, 1975 directors Donald Hammond, Emanuel Bogner, Paul Killian Sr., Paul Killian Jr., Charles A. Slutsky, Jeffrey Slutsky, John S. McBride, Harold Reynolds, Jay Hess, Hyman Hoffer, Herbert Salofsky and Jerome Ehrlich were called before the Grand Jury and were primarily examined about the Bar Mitzvah. Each witness only was before the Grand Jury for about five or ten minutes and the questioning by Barry Kingham dealt primarily with the Bar Mitzvah and whether or not the Board of Directors had authorized it. It is urged that this action was in clear violation of the defendant's rights under the Rules of Federal Criminal Procedure and his due process safeguards and consequently requires that the indictment be dismissed or in the alternative the defence be given comparative or equivalent discovery of the prosecution witnesses.

*AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.*

Fair Press - Fair Trial Directive

The defendant seeks to invoke Rule 8 of the Criminal Rules for the Southern and Eastern Districts of New York which prohibits the release of any information relating to this case by either the prosecution or the defence which is likely to ". . . prejudice the due administration of justice". From time to time there have been articles in the Times Herald Record of Middletown, New York which has quoted Barry Kingham concerning various parts of this investigation. We urge that the Court direct both sides of this litigation to refrain from making any statements to the press until this case is completely resolved.

The Court is authorized to invoke these powers under Sheppard v. Maxwell, 384 U.S. 333 (1966). This case has already received an undue amount of publicity and it is urged that the interests of justice are best served by no further comments from either side of this lawsuit concerning the progress of the litigation. It

is therefore requested that the Court direct all parties refrain from commenting in any fashion to the press in any way about this pending proceeding.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

Motion to Strike Surplusage

Throughout the indictment Paul Grossinger and Bernard Roth are referred to as co-conspirators and are specifically designated as "named herein as co-conspirators and not as defendants". This reference in the indictment is highly prejudicial to the defendant and goes beyond the form of accusation authorized to be made by a grand jury. Thus this reference should be deleted from the indictment.

The grand jury fulfills its investigative function by determining if there is probable cause to believe a crime has been committed, and it issues indictments accordingly. It also has the function of shielding and protecting the citizen against arbitrary and oppressive governmental action. Its powers, for the most part, are not defined in the Constitution or by Congress but rather, they are deliniated by the federal courts.

*AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.*

The function of an indictment is to accuse a defendant of the specific crime with which he is charged and thus notify him of the particular nature of his misconduct and further protect him from ever being placed in jeopardy again. These well defined functions do not include public accusations directed at persons not named as defendants. A federal grand jury is not empowered to accuse a named private person of a crime by means of an indictment which does not make him or her a defendant. There is no authority permitting a federal grand jury to issue a report accusing a person not indicted of criminal conduct. Consequently, there is no authority for a grand jury to achieve by indictment what it cannot do by making a public report of any kind.

We anticipate the government will argue that it was intended to expose the defendant to the broadest possible claim of conspiratorial misconduct. But certainly that can be achieved without naming non-defendants as

unindicted conspirators. The government will be allowed at the trial to introduce evidence of a persons participation in a conspiracy and thereby ascribe his acts and statements to the co-conspirators even if that person is not named in the indictment. This practice also violated the secrecy of the Grand Jury and should be condemned on those grounds as well.

Leave is sought of the Court to notify Paul Grossinger and Bernard Roth of their description in this indictment so that they might be allowed to intervene in these proceedings and complain of their denomination which goes far beyond the powers of a federal grand jury. Upon information and belief Paul Grossinger and Bernard Roth will join in this application to have the designation of unindicted co-conspirators expunged from the indictment.

For all these reasons the allegation of "co-conspirators but not named as defendants" should be

expunged from the indictment wherever it appears and this Court should grant such other and further relief as is just under all the circumstances.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

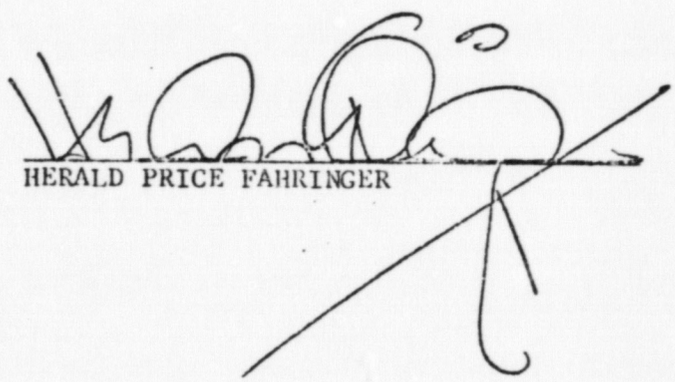
Other Motions

1. The defendant respectfully reserves his right to request further details or information relevant to these charges at the time this omnibus motion is argued.

2. After full discovery has been achieved it may be necessary to make other motions addressed to other legal and constitutional issues exposed by disclosures made by the government. Thus the defendant most respectfully reserves his right to make any additional motions that are necessitated by the implementation of the relief sought in this application. For instance, if the publicity becomes so adverse that it should be necessary to make a motion for a change of venue on that ground, counsel respectfully reserves the right to do so. If it should be discovered that the Grand Jury venire in this case systematically excluded certain groups of citizens representing a fair cross section of the community, then counsel reserves the right to press that issue in an appropriate application.

***AFFIRMATION OF HERALD PRICE FAHRINGER IN SUPPORT OF MOTION.***

WHEREFORE, it is respectfully requested that this Court grant the relief requested in the various branches of this Motion and accord the defendant such other and further and additional relief as is just and proper under all the circumstances of this case.



HERALD PRICE FAHRINGER

GOVERNMENT'S LETTER OF 7-17-75 IN RESPONSE
TO DEFENDANT'S MOTION PAPERS.

July 17, 1975

Honorable Milton Pollack
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: United States v. Leon Greenberg, 75 Cr. 532

Dear Judge Pollack:

The Government consents to the discovery of physical exhibits, books and records and other documents requested by the defendant in the above-mentioned case, in accordance with the representations made at the pretrial conference on July 17, 1975. Unless otherwise consented to at the conference, or granted by the Court, the Government objects to further discovery.

With respect to the bill of particulars, the Government consents to furnish the approximate date and time of all events charged in the indictment.

The Government will furnish the defendant with any Brady material and the required matter under 18 U.S.C. §3500 at the appropriate time prior to trial. The Government objects to all other motions filed by the defendant on July 17, 1975.

Respectfully,

PAUL J. CURRAN
United States Attorney

By:_____
T. BARRY KINGHAM
Assistant United States Attorney
Tel: (212) 791-0039

*GOVERNMENT'S LETTER OF 7-17-75 IN RESPONSE TO DEFENDANT'S MOTION PAPERS.*

cc: Herald Price Fahringer, Esq.
One Niagara Square
Buffalo, New York 14202

CASE AND EXCEPTIONS.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

vs. :

75 Cr. 1010

LEON GREENBERG, :

Defendant. :

----------x

Before:

HON. MILTON POLLACK,

District Judge.

November 5, 1975
10:00 a.m.

APPEARANCES:

THOMAS J. CAHILL, ESQ.,
United States Attorney,
for the Government
BY: T. BARRY KINGHAM, ESQ.
IRA H. BLOCK, ESQ., Assistant United States Attorneys.

HERALD PRICE FAHRINGER, ESQ.,
Attorney for Defendant Leon Greenberg.

Opening Statement by Mr. Kingham.

(Case called; both sides ready)

(A jury of 12 was duly impaneled and sworn)

(Two alternate jurors were duly sworn)

THE COURT: We will take a short recess.

(Recess)

(Jury present)

THE COURT: All right, Mr. Kingham, you may address the jury.

MR. KINGHAM: Thank you, your Honor.

May it please the Court, Judge Pollack, Mr. Fahringer, Mrs. Heitner, our forelady, and ladies and gentlemen of the jury:

As you know, Leon Greenberg, who is the gentleman seated right here, second from your view, and is the president of the Monticello Raceway, is charged here with the crimes of mail fraud and conspiracy to commit mail fraud.

He is charged in short with defrauding the Monticello Raceway of almost $5000 back in 1970, which money was spent at the Grossinger Hotel for the purpose of holding a bar mitzvah and a reception for his son Andrew, who was being bar mitzvahed at that time.

And as you know from Judge Pollack's introducetions, my name is Barry Kingham, I'm an Assistant United States Attorney here in the Southern District of New York, and with my colleague, Mr. Block, we are going to be presenting the government's case to you in the next day or so.

The purpose of my opening statement is to let you know quite candidly and at the very beginning what it is that you can expect from the government's case. After I speak to you, I believe Mr. Fahringer will have a few words to say, and then we'll begin with the presentation of the government's evidence. And the government's evidence will show this:

It will show through the testimony of witnesses and through documents which you will be allowed to read and see, and some may be read to you, and others may be testified about, through those means we will show you that back in 1970 Leon Greenberg was the president of a corporation, and the formal name of that corporation was the Sullivan County Harness Racing Association, Incorporated, but basically what it means is Monticello Raceway, because that corporation is the corporation that operates the Monticello Raceway which is up in Sullivan County, up in the Catskill Mountains.

Mr. Greenberg back in 1970 was not only the president of that corporation, he was also the general manager of Monticello Raceway. He was a member of the executive committee of the board of directors. And the evicence will show you that Monticello Raceway is a public corporation, and that means simply that the shares of stock of the people who own that corporation are available to the public rather than a closely held or a family corporation that you might be familiar with.

And that corporation was operated by a board of directors, as corporations are, and the board of directors had among it an executive committee which was responsible for administering the affairs of the board of directors.

Mr. Greenberg, of course, was the president of the corporation and was involved in all these other things as well, as the general manager of the raceway, and he served as secretary of the executive committee of the board of directors back in 1970.

Mr. Greenberg, as you will hear, is also a lawyer, he's an attorney, who had an office in Monticello up in Sullivan County, in addition to the work he was doing at the raceway.

The evidence will show, ladies and gentlemen,

that back in 1970, Leon Greenberg was friendly with a man by the name of Paul Grossinger, and Paul Grossinger, as the name implies, and as you must have guessed by now, is the head of the Grossinger Hotel; he and his sister own the Grossinger Hotel which is a short distance from Monticello Raceway up in what is actually called Grossinger, New York.

Mr. Grossinger had been a founder of the racetrack. He was one of the men who started it back in the late fifties, and Mr. Grossinger, along with Leon Greenberg and other gentlemen, was also a member of the board of directors of the Monticello Raceway back in 1970.

And the evidence will show, ladies and gentlemen, that during the spring of 1970 Paul Grossinger learned that a bar mitzvah was to take place for Leon Greenberg's son Andrew.

Now, for those of you who don't know, the evidence will show you that a bar mitzvah is a Jewish religious ceremony which takes place after a young man reaches the age of 13, sort of a coming of age in the Jewish religion, and generally, this type of a religious ceremony is followed by a banquet or a meal, and a cocktail party or a reception for the family and friends and other people who might be invited.

And so when Paul Grossinger learned that this important occasion was to take place in the Greenberg family, he offered Leon Greenberg the services of the Grossinger Hotel for the bar mitzvah.

The evidence will show that he told Mr. Greenberg that he had been on order to have the bar mitzvah at the Grossinger Hotel and that he would not charge him in the normal retail price that would be charged for him, but rather would give it to him at cost, and that is, would give it to him for the out-of-pocket cost, the amount of money it cost the hotel to put on the bar mitzvah and the reception after that.

Then during the summer of 1970, Mr. Greenberg got back to Paul Grossinger and told Mr.Grossinger that he and his wife would like to have the bar mitzvah and the reception at the Grossinger, and the date was set for November 7 of 1970, and the plans began to be made. The bar mitzvah was to take place at the Grossinger.

Then in late September or early October of the same year of 1970, and before the bar mitzvah, the evidence will show you that Leon Greenberg called Paul Grossinger and said, in essence, "Look, I want the bills for the bar mitzvah handled in a certain way. I want them sent to the tracks -- and by the track I mean The Monticello Raceway,

this corporation -- and "it's okay, it's all authorized."

And Mr.Grossinger, of course, the president of the corporation, of the Grossingers, that is, said, "I will put you in touch with Bernie Roth, and you work the bills out with him, and he will do whatever you tell him to do."

Now, Bernie Roth will be the Government's first witness, ladies and gentlemen. You will hear that he is the comptroller of Grossinger's, and a comptroller simply is a financial officer. He is the man who runs the finances of the Grossinger Hotel and he did back in 1970 as well.

So he is the man that you would be in touch with if you are going to work out any billing arrangements of any sort.

And so Leon Greenberg and Bernie Roth came into contact over the telephone pursuant to Mr. Greenberg's request of Mr.Grossinger.

And the evidence will show that Mr. Greenberg proceeded to tell Mr. Roth that the hotel, namely Grossinger's, was due some money for golf outings which had taken place during the summer of 1970, and that he wanted to get together with Mr. Roth and figure out how much the racetrack owed the hotel, and insure that the payment was made.

Now, the golf outings, as you will hear we are talking about, are occasions when trainers and drivers, we will here refer to as horsemen, raceway officials, namely people who are employees and officials of the Monticello Raceway, and pressmen, which simply would mean reporters, people associated with the public relations of the raceway, would go to Grossinger's Hotel to play golf, to have lunch and enjoy the facilities on certain occasions. And so that is what we are referring to when we talk about these golf outings or if we call them horsemen's outings, you will know what we are talking about.

Mr. Roth then asked Mr.Greenberg when these outings had taken place. And Mr.Greenberg said they were all on Wednesdays, and he gave him specific dates of Wednesday that these had taken place during July and August of 1970, and he told Mr. Roth how many people had attended each of the outings he claimed had taken place, and he asked Mr. Roth to figure out how much the cost of all this was and get back to him.

Mr. Roth,as you will hear, did not have any record at all at Grossinger that the outings about which Mr. Greenberg was talking had ever taken place.

So he took the information that Leon Greenberg gave him, calculated the price of lunches and golf carts

and greens fees, the types of things that might be involved in a golf outing, figured up a total and came to a total somewhere in the neighborhood of $3000 for the five outings, And he called Mr.Greenberg back at the Raceway and told him this, and Leon Greenberg, as you will hear, aid, "That is not enough, the track is owed some place around $5000. What else could have taken place?"

And you will hear that Mr. Roth said, "Well, maybe there were cocktail parties and dinners, I don't know."

Mr. Roth asked, "Did these really take place?"

And you will hear that he was assured by Leon Greenberg that they had taken place.

So Mr.Greenberg proceeded to tell Mr. Roth exactly how many people he claimed had had dinner and enjoyed cocktail parties after these suppoed golf outings. And you will hear that, at Mr.Greenberg's direction, Mr. Roth then went and figured in these costs and came up with the sum somewhere around $6000, and he told Leon Greenberg that he had arrived at that sum, and Leon Greenberg said, "Fine, mail the bills to the track, Monticello Raceway, to my attention."

Now during this time, Mr. Roth was having contacts with his boss, Paul Grossinger, and he was telling him that he was doing what Leon Greenberg had

suggested, and Paul Grossinger was telling BErnie Roth, as you will hear, "That's fine, whatever Leon wanted you to do, you do it."

(continued on next page.)

So Mr. Roth did it.

Before he mailed the bills out, what he did was he went to Paul Grossinger and said, "This is the total of the bills that I am sending to Leon Greenberg for these outings."

You will hear that Mr.Grossinger said, "Be sure to take off the usual 25 per cent discount that we always give to the Raceway."

Mr. Roth did that and sent the bills out. Bills like anyother bills were paid by the Raceway, by a check, sent out by the Raceway in the normal course of business apparently for horsemen's outings. The check was signed by Leon Greenberg and by Sidney Sussman. Sidney Sussman you will hear was the board of directors of the Raceway and authorized to sign checks.

The bill was paid by a check, as you will see, that is dated October 29. It is a Racetrack check to Grossinger's, it was deposited by Grossinger's on November 4, 1970.

Then on November 7, as planned, the bar mitzvah took place. In the morning was the religious ceremony, which took a couple of hours, and after that was a lavish cocktail reception and a mid-day dinner for 312 people.

You will hear that the retail value of what

that would have cost somebody else just coming in to have it was somewhere in the neighborhood of $12,000, but that the cost that Grossinger's figured for having put this bar mitzvah and reception on was about $5800.

Bernie Roth, as the comptroller, you will hear was responsible for collecting the various amounts of costs from the different departments, like the bar and the kitchen and the dining-room and what it was that cost the Grossingers to put this on to come up with a final figure. He did that.

You will also hear by the time he had done that he was unable to speak to Paul Grossinger about it to tell him what the cost was because Mr. Grossinger was ill and was then away and they didn't get together finally until February of 1971 at which time, as youwill hear, Mr. Roth simply showed Mr.Grossinger a summary statement of what the cost to Grossinger was and Mr.Grossinger said, send the bill.

And so Bernie Roth sent the bill foe $5843.25 to Leon Greenberg at his law office at 190 Broadway, Monticello, New York. Not to the track, but to him personally.

That bill was sent out on March 12,1971.

You will hear that a bill was also sent out on

April 2nd, a normal monthlystatement, sent cut to Mr. Greenberg at the same address and that on April 6, Mr. Greenberg sent a letter to Mr.Grossinger enclosing the original April 2nd bill for $5800 and change and saying, "Dear Paul: Paul Grossinger, please verify the correctness of this bill."

With that Mr.Grossinger called in Mr. Roth and, as you will hear, with mr.Greenberg's knowledge, had Mr. Roth knock down the $5800 bill to a figure youwill hear referred to $987.09.

The difference, ladies and gentlemen, that you will hear between $5843.25 and $987.92, there is another number, $485.16, the exact amount that you will hear the Raceway had earlier paid in October of 1970 to the Grossingers for the horsemen's outings that were approved that never took place.

You will hear that Mr. Roth did, as he was told by Mr. Grossinger. You will hear thathe sent a new bill in 1971 to Mr.Greenberg. You will hear that that bill went unpaid for a couple of months and finally in July of 1971 Paul Grossinger called Mr.Greenberg and said is there anything wrong and he said no, nothing at all, and the next day Mr.Grossinger received a check for $987.09.

That basically, ladies and gentlemen, is as

simply as I can show you at this point is what the Government expects to prove here. There are other events that take place in 1974, namely, in April of 1974 that you will hear testified about and they shed light on what the charge is here.

You can see that the charge is this: The charge is that Mr.Greenberg in essence stole $4856.16 from the Monticello Raceway and used that money by having phony bills prepared by Grossinger's, used that money for the purpose of funding the bar mitzvah which was held for his son, Andrew Greenberg.

We will prove that he had agreed with Paul Grossinger to do that; that Mr. Grossinger knew what he was doing, and so there is a conspiracy charge, and we will prove that he defrauded the Raceway; that the Raceway did not authorize its money to be spent for phony horsemen's outings on a bar mitzvah, and we will prove that the outings never took place.

We will prove to you that based on the facts known to him Leon Greenberg could not have believed either that the outings took place or that he was allowed to spend that kind of Raceway money for his son's bar mitzvah.

Now, a brief word before I close about some of the witnesses. There areonly about five or six witnesses

in this case for the Government.

There are several documents that you will see and that will be read to you and testified about.

Two of those witnesses are Bernie Roth and Paul Grossinger and both of them will be testifying under a grant of immunity from prosecution.

You will hear when they testify that in 1974 theyr eceived immunity from New York State in connection with an investigation into this matter and that the Federal Government considers it is bound by the immunity grant that they received in 1974 from the State. That may sound a little complicated, but, simply put, we will show you that these men can't be prosecuted for the actions they took in connection with this scheme to defraud.

They can, however, as you will hear, be prosecuted for perjury if they should lie to you from the witness stand.

Now, in closing, ladies and gentlemen, let me say this, if I may: The evidence in a criminal case and I think there are a couple of you who might have sat on criminal juries before, doesn't all come in at the same time. Evidence in cases like this comes in piecemeal. One witness will testify to one thing and another to another, and it is not until the end of the entire case that you have the whole

picture.

Evidence is punctuated with objections and rulings from the Court and so forth and so I ask you in the name of fairness and in the name of justice here, keep an open mind. Keep an open mind until all of the evidence is before you because that way the Government gets a fair trial and the defendant gets a fair trial.

The Government and the defendant are the parties here and you, as the jury, are bound under the Constitution to give all sides a fair trial, as I know you will.

I also suggest this to you: Mr.Fahringer and I as lawyers deal in words every day. That is our stock in trade. Those words, no matter how convincing or sincere they may sound, arenot the evidence in this case. The evidence that you received in this case is what you will hear from the witness box and what you will see in the documents.

Ladies and gentlemen, when you have heard and seen the evidence in this case, we submit to you that you will be able to reach but one conclusion and that is that Leon Greenberg is guilty.

Thank you for listening to me and I know you will be attentive throughout the case.

Thank you.

Discussion.

THE COURT: Mr. Fahringer.

MR. FAHRINGER: Please,your Honor, may I reserve my right to make an objection to the opening at an appropriate time?

THE COURT: This might be an appropriate time. I will hear you at the side bar.

(At the side bar.)

MR. FAHRINGER: I think there was a grievous misstatement of the law. As to transactional immunity, as decided by the Second Circuit, they do not exempt New York transactional immunity. The case of United States versus Kiley, where a police officer got transactional immunity and was indicted in this District, and the Second Circuit upheld the conviction. I think they are subject to prosecution if there was an independent source of evidence by which they could found their prosecution and I think the statement made by Mr. Kingham that they cannot prosecute them is an incorrect one.

THE COURT: Do you want to make this statement to the jury as your reprise to the statement made by the Government?

MR. FAHRINGER: Your Honor --

Discussion.

THE COURT: And leave the law to me later on.

MR. FAHRINGER: Of course I will leave the law to you, but my complaint is that the jury has no business hearing that in the first place, as I raised earlier.

THE COURT: Do you want a discharge of the panel?

MR. FAHRINGER: Move for a mistrial, you mean, your Honor?

No, I don't.

THE COURT: I will let you under those circumstances state your own version of the law. I will instruct the jury that the law, no matter what either ofyou gentlemen say about it, will be the law as I give it to them in the charge ultimately and that in either respect these are the views of counsel on the subject, which are not binding on the jury, but they shall accept only the judge's views on the law.

Is that all right?

MR. FAHRINGER: Your Honor, I am in accord with what you stated. I just don't know at this point to be candid with you what my remedies are. I have registered my complaint, and you have dealt

with it. It is a matter of law.

To be perfectly fair with the Court, if this matter is straightened out with the jury, I have no complaint. If you jury is properly advised at some point, then my ill has been remedied, I would have to say.

THE COURT: If you think there is anything to revise, I will let you think about it and put it down on a piece of paper and hand it to me and I will at the proper time give such legal instructions as may be necessary if any, to remedy the situation if it need be.

MR. FAHRINGER: Thank you, your Honor, for hearing me.

MR. KINGHAM: Thank you.

(In open court)

THE COURT: All right, Mr. Fahringer.

MR. FAHRINGER: If it please, your Honor, Mr. Kingham, and ladies and gentlemen of the jury:

As you know, my name is Herald Fahringer and I have the privilege of representing Mr. Leon Greenberg in what undoubtedly will be the most important moment ofhis life. We have never met each other before and our acquaintanceship will be short, but I would like to start that relationship off with you by establishing in this trial a spirit of candor and forthrightness.

You have heard Mr. Kingham's view of this case. Now I would like to share with you my version, which is quite different.

I think it is important that I just mention in passing, although Judge Pollack will deal with this in greater detail, that we are not obliged to make an opening, so when I indicate to you that we will prove such and such or we will establish these facts, that is in keeping with the fact that we don't have to prove anything, we are presumed to be innocent and the burden rests with the prosecution.

Now, let me tell you what we are going to prove about Leon Greenberg, first, who is the subject of this prosecution.

We are going to prove to you that he was raised right in the Catskill Mountains, in Mountaindale on a farm. His father ran a boarding house. He went to school, as you know, and then to law school, became a lawyer, became an assistant district attorney right there in Sullivan County and was a prosecutor himself for three years and then back in about 1957 he became the lawyer for the Monticello Raceway and this will all fit into our proof in this case because he started out with the Monticello Raceway as, first, a lawyer and, then

the personnel director and then eventually the vice president and then in a period of time in 1968 he worked himself up as president of the Monticello Raceway and, incidentally, as Mr. Kingham has told you, came to occupy other positions on the board of directors and on the executive committee.

You are going to hear testimony about he worked seven days a week, 12, 14 hours a day because he was always on the track and that will be an important feature in this case. You will hear people testify that he would be the first one in in the morning and sometimes the last one to leave in the evening, so he knew the track's operation and, most important of all, he was concerned about the horsemen and the entertainment of the horsemen, which I will explain to you in a moment.

Now, in the fall, I can't fix the date for you, I don't know that anybody can, but sometime, I believe, in the late summer or maybe September of 1970 he began preparing for his oldest son's, his first son's bar mitzvah, and we are going to show that he wanted to go all out. This was their first bar mitzvah and so he was planning, and this will become important, I think, he was planning on having this at

the Concord Hotel. Arrangements or at least some contact had been made there.

Now, the Monticello Raceway, I think you know from what Mr. Kingham told you, is right in the heart of the Catskills. On the board of directors of the Monticello Raceway is Mr. Kutcher, who runs the famous resort up there, Kutcher's. There was Mr. Slutsky, who had the Nevele Hotel, Mr. Sussman, who was chairman of the board who had the Windsor Hotel, Mr. Grossinger who had the Grossinger Hotel and one or two others who were associated with the Pines and the Tamarac. Everybody on the board of directors either ran or was closely connected with a hotel.

I think you might understand, Mr. Greenberg being president of the raceway, had decided to go to the Concord, where they had no one on the board of directors, and he was prepared to pay whatever the price was that the Concord charges.

One day Mr. Grossinger came into the Monticello Raceway. He came into his office and said, "What's this I hear that you are going to have your bar mitzvah at the Concord?"

Now, I think the proof will show, I think maybe Mr. Grossinger will testify to this, that at that

particular time, maybe still today, Grossinger's and the Concord were like Gimbels and Macy's. He said, "How can you do this? I am on the board of directors and I am a vice president of this association, of this organization, why don't you have it at my place?"

Mr. Greenberg said, "Well, I had thought I would go someplace where nobody was connected"and at that point we have a serious conflict in facts.

Mr. Grossinger said to Leon Greenberg, "If you have it at my place, I will take care of the food and you take care of all of the other expenses."

You must understand something and I wantto be fair with all of the witnesses in this case because, as you will soon learn, all of this began to be developed in 1974, some four and a half years after the event occurred, so that I think you are going to hear people here say, "Well, I can't be sure of this" and "I can't be sure of that."

That undoubtedly I will prove to you beyond any caveat of a doubt was Mr. Greenberg's understanding. He went back to his wife, he talked with his wife and they came back, we will show, to Mr. Grossinger sometime later and said, "Pine, we are going to have it at your place."

Incidentally, it will be established in this case that Grossinger's is one of the largest and one of the most prestigious hotels in that area.

At that point, and, incidentally, may I just take a moment and say that our proof is going to show through some documents, some documents in this case that confirms what Mr. Greenberg's understanding was in terms of "You will furnish the food and I will take care of everything else," that would include the liquor, that would include the gratuities, the flowers, the entertainment, the band, they had a little magician there for the kids and all the other expenses connected with it.

When the proof unravels in this case I think you are going to see some facts that will come out as a matter of record that confirms that, records that were made on November 7, the day of this bar mitzvah, which completely verified his version of what he understood the agreement was.

When he called Mr. Grossinger back and said to him, "All right, I've talked with my wife, we are going to have it at your place," he said to Mr. Grossinger, "Incidentally, you know we have been sending a lot of horsemen up to your place."

Now let me tell you right now, we are going to prove to you those events. We are going to bring horsemen in here and we are going to put them on that witness stand and they're going to testify to you, "I was there, there were parties, there were 35men, there were 45 men," whatever. That we will prove.

But Mr. Greenberg said, "Look, we have been sending these horsemen up here, it's now September. We haven't had any bills from you. If you are going to do this for me, at least send the raceway these bills."

Now I want to be perfectly fair with you. There were some hotels that had done this on a complimentary basis. There were some hotels, they would send the horsemen up there, not as many, but they wouldn't send any bills at all. So this is where the authorization comes in.

Mr. Greenberg said, "I have authority to have you bill us for that, and we'll pay you for it."

And those words that were said by Mr.

Greenberg.

Now, forgive me again, but let me digress, because this horsemen's situation might be strange to you and I think you are entitled to know right now what the proof will show on that.

The Monticello Raceway is a small raceway. It cannot compete with purses and with the attendance that is at Yonkers and Roosevelt, and so that drivers who race and get a percentage of the purchases have a much greater incentive to race at Yonkers and Roosevelt. Monticello Raceway is up in Monticello, New York, in the middle of Sullivan County, about two hours drive from here, and so to give an incentive for drivers to come up there, they did all kinds of things.

And you are going to hear about this -- not only golf outings, other things, clambakes, dinners. They spent in some years $40,000 to $50,000, the raceway's funds, to encourage good drivers who would come up there during the summer and they would at least say, "Maybe we are not making as much money in the purses but at least we have a great time, we go out."

It's a lovely community, the climate and everything else.

So there was a concerted program -- and I

don't think one will dispute that -- I think that they will come in here, Mr. Grossinger, Mr. Roth, they'll acknowledge there were outings, that other hotels had these outings. We are going to prove that hosemen in quantities, 35, 40, what have you, went to other hotels, too, not just Grossinger's.

And so, as I have indicated, Mr. Greenberg said, "Please send us bills for that."

Now, that is true, he turned it over to Mr. Roth, the comptroller, and Mr. Roth called Mr. Greenberg up and he said, "I understand that you need some bills for horsemen, whatnot."

Now, let me tell you what the procedure was from our end here, and in terms of our records, so that you know we knew how many horsemen had went up and what horsemen went up.

When the raceway was going to have an outing, and it was every Wednesday, which is important, they did it regularly every Wednesday, what they would do is, they would announce over the public address system, at about 9 o'clock in the morning, maybe 9:30 and 10 o'clock, any drivers, trainers, and it wentto owners, and anybody that really was connected with the operation of the raceway that would like to play golf

at Grossinger's today, sign up in the racing secretary's office.

We are going to prove all of this. We are going to show you that what they would do is, they'd take a sheet of paper, much like this, and they would not post it up on the board, sometimes two sheets -- depending how many people signed up -- and the men would sign down this side and sign down the other side. That sheet then would be transmitted up to the administrative office, they would call Grossinger's, or call the Nevele and they'd say: "We are going to have about 37 horsemen coming up today. They'll be up there for the afternoon to play golf and have lunch" whatever. This was understood by all the hotels. He talked to maybe the banquet manager or the dining room manager; he'd say, "Fine."

Then, they'd contact the pro shop; they'd let the pro know about it, so he would expect them and could make the necessary arrangements.

At about 12:30 they would go up, and they would have a luncheon, they would play golf,they would -- they were welcome to stay for dinner, those drivers who weren't racing.

Now, the reason they went to Grossinger's so

much, and we're going to prove those days to you, is because Grossinger's was a very attractive place to go to. We are going to show you that Grossinger's was the only hotel in the area that had this very lavish buffet luncheon. Also Grossinger's was certainly one of the nicest golf courses in that area.

I think the proof might show they had just expanded it and that it was the best -- as the golfers say, the best manicured golf course in the area. So that not only would a lot of people sign up for Grossinger's, but they liked to go back, and so that from time to time they went back there, whereas there were some hotels in the area there that only had a pitch and putt course, or only had a three par course of didn't have a golf course at all.

For instance, the Windsor didn't have a golf course, and so that is why you had this very heavy demand to go to Grossinger's.

Now, let's get back to when Bernie Roth called Mr. Greenberg. Mr. Greenberg was taken back that they didn't have the records, and he said, "Well, what dates were they up there?" and Mr. Greenberg said, "Well, it's on Wednesdays," but what he did was, they had their own records, because until they got their

bills they kept these sheets, they knew the number of people who had gone up, they evern knew who they were, though that wasn't important on the bill; so what he did, he got their records and on the telephone to Bernie Roth he said, "Well, these are the dates."

Now I want to again say, and the promise I made to you in complete candor and frankness, there may be, there could be some discrepancies on dates. Some of these sheets weren't dated.

They put the sheet up on Wednesday, all the guys would sign up, nobody needed to date that sheet because it was that very same day; they'd take the sheet up to Grossinger's, the guy would be checked off and that was it.

But what he did was, he took the ones that he did have and he said, "It must have been this date, it must have been that date."

And then when Mr. Roth asked him, "How many men were there?" he took out the sheet, he said, 41, 37, 27, 17, whatever it might be.

And so Mr. Roth made some computations. Incidentally, we are going to prove to you that there were drivers that went up there on Sunday nights because, keep in mind, as Mr. Kingham pointed out so

well, and on this score I concur with him wholeheartedly, the issue in this case was, was the racetrack defrauded? Did they spend money for which they got no services? I think that will dominate this lawsuit.

And so that we are going to show you, too, that there were evenings, that drivers went up there on a Sunday night and didn't play golf, they had dinner, 10, 12, 13 of them. We never got bills for these. We never paid those.

All right, now, so he gave him all this information, and he was able to say, because Mr. Greenberg, incidentally -- I want you to know this -- never went on any of the outings, he didn't go up there and play golf, he was back at the racetrack working.

As a matter of fact, on Wednesdays, they used to have, I think it was their executive meeting, so that he would be tied up with that, in the raceway, and the trainers and the drivers, whatnot, would be up, you know, having the outing.

So when Bernie Roth said, "What did it involve?" he could say it involved lunch, it involved the cocktails, it involved golf. I presume it involved carts and went through the whole thing, and he knew, that it also included dinner.

When Mr. Roth called back and said, "3000," we are going to show you there's nothing ominous about that. Mr. Greenberg said, "There's 168 men that went up there for five affairs. On your own rates, at $40 a day, we know that that would be $6000, $7000."

When he said $3000, he simply said, "That can't be right."

But Mr. Roth did the computing. He did the figuring. And the bill didn't come to $6000. It came to $4856.16. And the bill was sent in.

When it came in, because some of the hotels did this complimentary, Mr. Greenberg went to one of the members of the executive committee and he said, "Now, look, these are the outings we had up there. Sometimes Paul does this complimentary, but we are going to pay for it this time."

And they said, "That's perfectly all right."

And so that the payment was authorized.

As a matter of fact, you are going to hear some proof in this case that Mr. Greenberg had the chairman of the board of Monticello Raceway sign this check, hand sign -- they have a machine, incidentally, the machine signs checks, some of you may know about, you put the check in, the bookkeeper types it up and it runs

out, and it's machine-signed.

But this he signed in person, and he had Mr. Sussman sign it in person, so there was no mistake about what this money was for, and the check was sent out.

Very significant: When this check was received by the Monticello Raceway, it wasn't put in any bar mitzvah account. It wasn't attributed to Leon Greenberg. They have a regular account and they wrote right on it, "horsemen's outings." They credited it tothe raceway account, because I'm going to show you in a moment, that they also had the bar mitzvah account, you know, which was an entirely different account, that was for Mr. Greenberg and his son, Andrew's bar mitzvah.

So that the check goes out, it's properly authorized, it's received by the Monticello Raceway and it's credited to the Monticello Raceway account for horsemen's outings.

Now, please forgive me but I want to just repeat to you, we are going to show that the outings took place, that they came to that amount of money, that it was a proper charge, and it was a proper payment. And I think that is really the essence of this case.

Now, what about the bar mitzvah? The bar mitzvah was held on November 7th. It was not an evening bar mitzvah with a big dinner and a whole evening affair. It was an afternoon. The service was held in the morning, as most of you know is commonly done, and I think it ran to about twelve o'clock and then they adjourned, there was a short cocktail party and then there was a sitdown dinner that lasted till about three or four o'clock.

Mr.Greenberg paid every single expense connected with that bar mitzvah except the food. He paid -- we are going to bring in the checks, his personal checks, no raceway checks; he paid for the flowers, he paid for the band which was over a thousand dollars, he paid for a magician that came in and entertained the children, he paid, of course, theRabbi, he paid the gratuities, he paid everything except the food.

And I expect to show you that their ledger cards support us in that position.

Now, Mr. Kingham, I think, is correct when he

says to you the bar mitzvah was over -- it was, we think, a success -- and Mr. Greenberg went back to his normal work-a-day life.

Mr.Grossinger, I understand, did go into the hospital. And then one day Leon Greenberg gets a bill for almost $6000.

Now please understand, we are not saying that there is anything unreasonable about that bill. What we are saying is, his understanding was that what he was paying for was the liquor, and by their own records, we are going to show, because they had to compute the cost of the liquor, the cost of the liquor itself was only $522. So that when he got a bill for $6000, again, nothing ominous, didn't pick up the phone and say, "Hey, Paul, what about our deal,you know?" He goes to his secretary and says, "Write a letter and ask for a verification and itemization of this bill."

Incidentally, there was no itemization, just a statement, $5843 and some cents.

Well, she wrote out the letter. We will prove to you that Leon Greenberg never talked to anyone. He didn't talk to Bernie Roth. He didn't talk to Paul Grossinger.

The next thing you know, he gets a bill for almost

a thousand dollars, $987, which he considered to be reasonable and fair and he paid it. He didn't question it, he didn't call up and say, "Shouldn't it be more?" He didn't call up and say,"Shouldn't it be less." He sent out his personal check and he paid the bill.

Now, that is where things stood in 1971. They took that check for $987 and they put it on the bar mitzvah account, the amount of $4856, that check was still over in the Sullivan County Harness Racing Association.

Mr. Greenberg, as far as our position is concerned, and we think it is a compelling one, the Raceway had paid for the golf outings, which we are going to prove to you, he, in turn, had paid for what he was obligated -- incidentally, his out-of-pocket costs for the bar mitzvah came to close to $6000. The bar mitzvah, please understand, didn't cost him a thousand dollars, beca,se he had paid for everything else at Grossinger's except the liquor which he paid for with the $987.

One other fact that we are going to show you: You see, inthe mountains, when a club was represented on the board of directors, there was a matter of a disconnt, and you ought to know about that, you ought to understand that right now. In other words, if the chairman of the board of directors who had the Windsor Hotel or had Tamarac

Hotel, if the fellows came over and placed it his way, very often they would give him a discount; they would give the Raceway a discount because, after all, they were shareholders, they wre on the board of directors. And so that one thing Leon Greenberg insisted upon, and we think this is a decisive factor in this case, what he insisted upon, "Paul, when you send those bills in for the horsemen's outings you have got to give us a 25 per cent discount."

Now we will prove to you that if these bills were fictitious and fraudulent, what difference would it make if there was a 25 per cent discount or not? So that we are going to show you through this evidence that this is compelling proof that Leon Greenberg knew these were bona fide, that they were actual affairs that took place.

But I want also, in my opening statement to you, explain a problem to you. Those of you who know about the Catskills and the hotels there and the American plan, you don't have checks for everything. You come in and everything is charged to your room. So that you may hear proof in this case, well, where were the slips for these meetings?

Well, as youknow, if you go into the dining-room, these places were on the American plan, and if the dining-room manager knows well these are all the horsemen here,

the 27 or 17 horsemen, they don't run around making up checks, because they are not oriented that way.

When you go in to the CAtskills, you pay your room rate, $40 a day or whatever it might be, you get all the food, all the meals you want. So that there is that aspect of this case which, incidentally, was one of the reasons I suspect that Bernie Roth said, "Well, look, I need some help, what are the dates, and how many men were up here," because their record situation, you see, wouldn't accommodate that. I think you ought to know that.

Now you must at this point be asking yourselves, well what happened here? Why would Mr.Grossinger say these things if these horsemen's outings took place?

Incidentally, I think the proof will be that Mr.Grossinger certainly was under the impression that he had to authorize these outings, and that he only recollects authorizing one or two, and we will have some proof for you on that that I think will satisfy you that others may have occurred. But in any event, in 1974, there is a lawyer in Monticello by the name of Lazarus Levine. I want you to know this, I want you to know everything about this case. We are going to prove it to you that Lazarus Levine hated Leon Greenberg. They were inveterate enemies and

I don't know where the fault lies, but the two men were like electric and water, they just despised one another.

Remember, the board of directors who had been removed by Mr.Greenberg because of some misconduct, went to Lazarus Levine and wanted him to sue the Raceway and sue Leon Greenberg, and he had that suit under contemplation when this man said, "I understand that there were some outings up there," meaning at the Grossingers, "that there is no support, no records for."

And Lazarus Levine called Paul Grossinger, called him down to his office; Paul Grossinger didn't know what it was. He walked into his office and said, "What's this all about?"

And he said -- now bear in mind, you are going back four years -- "Did you have some outings out there for some horsemen?"

And he said, "Yes."

He said, "Are they ordinarily complimentary?"

He said, "Yes."

He said, "Were bills sent out? Were charges -- do you have records to support these things?"

He said, "No."

Now, the rest you will hear in this courtroom about what happened, but based upon that, the accusation

was made, Mr. Levine had told Mr. Grossinger to resign, he dictated the letter, he sent it out, he directed him to send the money back to the Raceway, and he told him to go to the proper investigating authorities.

Now, when the letter of resignation came in to the Raceway -- and this will complete my opening to you -- I don't want to take up much of your time, you have been very patient -- but when the letter of resignation came in to the Raceway, they were stunned by it.

It is a letter saying that "We think this money should be returned to you," something to the effect, these charges were not properly incurred."

Mr.Greenberg didn't, you know, tear it up and throw it away. He immediately called a board of directors meeting. He said, "We have gotten this," and an investigation was conducted immediately, which is where we get a lot of our proof.

An audit was made of those accounts. Horsemen were interviewed. Checks were gone back and checked over. And they determined, they determined, through their internal auditing procedures,using accountants, using a lawyer who investigated the matter, and other service people, they determined that these bills were absolutely justified, that these outgings took place, that it was a valid charge,

and the board of directors refused to cash the check, which was a certified check.

In the meantime the check was subpoenaed by the United States Attorney's office, is in their control now, and it has never been cashed. But they wouldn't have cashed it anyway, because their investigation led them to believe that these were bona fide charges, and that it was a proper expense.

Now, I only want to say this, and I don't know that this is my province, but I think Judge Pollack will instruct you on this: My understanding is that Mr. Grossinger and Mr. Roth are not immunized from prosecution, but you will hear him on that subject, and I have confidence that Judge Pollack will properly and with wisdom instruct you on that matter.

I think it may be important here because of some circumstances that may develop in this trial as to why they said what they said and why they did what they did.

But that will be left to you, and I know it is in good hands.

Let me just finally say this to you that the board of directors voted a vote of confidence for Mr. Greenberg. He is still president of Monticello Raceway. He still occupies that office. And we are here now today

for the first time in any court of law, where these matters can be litigated, and we welcome your participation in that judgment.

In closing, let me just say this, as Mr. Kingham -- where Mr.Greenberg sits is the lowliest place in the world and that is why you are here and that is why Judge Pollack is here.

You sit in partnership with this Court to see that the rights guaranteed him under the Constitution and these rules of law that we have talked about are properly accorded him. If you do that, if you abide by your consciences, if you listen to all the evidence in this case, if you honor your oaths as jurors, I tell you right now, from the bottom of my heart, we will have no reason to fear your verdict because there will only be one verdict your conscience will compel you to return in this case, and that is a verdict of not guilty.

Thank you very much.

THE COURT: Ladies and gentlemen, I think it is so close to the time that we ordinarily recess that I will now recess the case for your luncheon period.

We will resume at two o'clock.

Please try to get back a few minutes before so that we can start promptly.

Recess.

You may go out.

Those in the courtroom will please remain until the jury has gone out.

(Jury left the courtroom.)

(Luncheon recess.)

---

AFTERNOON SESSION
2:00 P.M.

(In open court; jury absent.)

THE COURT: You wanted to put something on the record of some documents or something?

MR. KINGHAM: Your Honor, it is with respect to the stipulation on the exhibits, at least Government Exhibits 1 through 20 for identification are offered in evidence as Government Exhibits 1 through 20, respectively.

THE COURT: Any objection?

MR. FAHRINGER: None.

THE COURT: Received.

(Government Exhibits 1 through 20 were received in evidence.)

MR. FAHRINGER: Exhibit 21, if it please,your Honor, is a bill that was sent to Mr.Greenberg that includes other items. What I have done is I have offered -- that is the only one I have an objection to, why I bring your attention to it, what I have offered to do is this because I think these other items are prejudicial and have nothing to do with this lawsuit, I have offered to stipul-te that the Grossingers sent a bill in the amount of $4856.16 to avoid the jury wondering about the additional amounts of money that are recited in there.

MR. KINGHAM: That is 21A through 21Q, your

Honor, would be at the end of your exhibit file and they are what we would call the current Grossinger bills, that is, bills from April 18,1974 through October 1, 1975, and there are, indeed, other items on that other than the bar mitzvah bill.

MR. FAHRINGER: My fear is that the jury is liable to speculate about that and wonder what is going on as far as those charges are concerned and they have nothing to do with this lawsuit.

It seems to me the Government is satisfied if they prove that they sent the bill that they claim was due for the bar mitzvah.

THE COURT: Well, why can't the exhibit be redcated by just Xeroxing so much of it as is not objectionable?

MR. FAHRINGER: That is perfectly agreeable with me,your Honor. The only thing we have to be careful with is the total.

THE COURT: You don't need a total.

MR. KINGHAM: I may be able, your Honor to eliminate the problem through the testimony of the witness indeed by just showing him one bill and I think perhaps we can alleviate the problem.

THE COURT: Let me just show you this in case

that isn't satisfactory. I don't see why this couldn't be Xeroxed that way (indicating).

MR. KINGHAM: It could, your Honor.

THE COURT: Then you will get the date.

MR. KINGHAM: It could indeed, your Honor. What I will do is I will have the witness testify to cover that and I don't think it is disputed by Mr. Fahringer anyway so I think we can take care of that.

THE COURT: All right.

MR. FAHRINGER: Thank you, your Honor.

(Jury present.)

THE COURT: All right, Mr. Kingham.

MR. KINGHAM: Thank you, your Honor.

The Government calls Bernard Roth.

B E R N A R D R O T H, called as a witness by the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KINGHAM:

MR. KINGHAM: May I inquire, your Honor?

THE COURT: Yes.

Q Mr. Roth, I ask you to keep your voice up, if you would, sir, so I can hear you and so that the last juror in the box can hearyou.

Will you do that, sir?

A Yes.

Q How are you employed?

A As comptroller of the Grossinger Hotel.

Q What are your duties as comptroller of that hotel?

A I am in charge of the financial books and records of the hotel.

Q How long have you been in that position?

A Over 16 years.

Q Do you have any employees on your staff?

A Approximately 30.

Q What types of duties are those employees engaged in?

A Accounting, bookkeeping, cash conversion, payroll, timekeeping, night auditing.

Q Where is the Grossinger Hotel located, Mr. Roth?

A In Sullivan County about a mile south of Liberty, New York, in what is known as the CAtskill resort area.

Q What type of a hotel is it?

A It is a resort hotel.

Q Is your office, Mr. Roth, the office that handles billings and accounts for that hotel?

A Yes.

Q Do you hold any other position with Grossinger's other than comptroller?

A Treasurer.

Q Are you the treasurer of S & H Grossinger, Inc.?

A Yes.

Q What is that corporation?

A That is the corporation that operates the Grossinger Hotel and Country Club.

Q How long have you been treasurer of that corporation?

A Since December of 1972.

Q Who are the owners of that corporation?

A PaulGrossinger and Elaine Grossinger Etess.

Q Mr. Roth, you are testifying today pursuant to a grant of immunity, sir?

A Yes.

Q What do you understand the terms of that grant of immunity to be?

MR. FAHRINGER: I object to that.

THE COURT: Overruled.

Q Please answer the question.

A That, as I understand it, is transactional immunity which means that anything that arises from this incident I would not be held criminally liable for except if I made a false statement or testified falsely in which event I would be subject to criminal prosecution for perjury.

Q Now, Mr. Roth, you mentioned Paul Grossinger. What position does he hold with that corporation and with Grossinger?

A President.

Q How about Elaine Grossinger Etess,what is her position?

A Executive vice-president and secretary.

Q How long have you known Paul Grossinger?

A Approximately sixteen years.

Q Would you say he is your immediate superior?

A Yes.

Q You are directly responsible to him for the performance of your duties?

A Yes.

Q Mr. Roth, do you know a man named Leon Greenberg?

A Yes.

Q Do you see Mr.Greenberg in the courtroom and would you point him out, please?

A The gentleman sitting to the right of Mr. Fahringer.

MR. KINGHAM: Indicating the defendant, your Honor.

THE COURT: Yes.

Q How did you come to know Leon Greenberg, Mr.

Roth?

A Through his association with the Catskill Resort Association of which he was president.

Q Do you recall when it was that you first met him?

A I believe the first time was some time late in 1969 or early in 1970.

Q Did you know him then in the fall of 1970?

A Excuse me.

Q Did you know him in the fall of 1970?

A Yes.

Q Do you know what his business was at that time, what his occupation was?

A Yes.

Q What was that, sir?

A He was an attorney, president of the Sullivan County Harness Racing Association, and director of the Sullivan County Harness Racing Association, again manager of the Monticello Raceway.

Q During the fall of 1970, Mr. Roth, did you have a conversation with Paul Grossinger about Leon Greenberg and the Monticello Raceway?

A Yes,I did.

Q When did that take place, sir?

A Somewhere toward the latter part of September. Somewhere in the middle to the latter part of 1970.

Q Where did that conversation take place?

A In Mr.Grossinger's office.

Q Where is that located?

A That is located in the executive office area of the hotel.

Q What did Mr.Grossinger say to you and what did you say to him during that conversation?

MR. FAHRINGER: Objection, if it please your Honor.

THE COURT: Have you got the name correctly for the inquiry?

MR. KINGHAM: I have,your Honor. May I send up a note?

THE COURT: This is ta ken subject to connection.

MR. KINGHAM: Thank you, your Honor.

Q What did Mr. Grossinger say to you and what did you say to him in that conversation?

A Mr. Grossinger told me that I had to prepare some statements to Monticello Raceway for horsemen's outings which took place during the summer of 1970 at Grossinger's.

Q What did you say?

A I asked him what it's about and he told me to call up Leon Greenberg or get a call from Leon Greenberg who would give me the details.

Q Did you say anything else?

A I asked him if there is anything that I should know and he told me that when he wants me to know, he will let me know. He told me to contact Leon Greenberg.

Q Do you know, Mr. Roth, what the term golf outings means?

A Yes.

Q What is that, sir?

A That is a group of people that come to the hotel who are not registered at the hotel, but for the purpose of playing golf and perhaps having lunch after playing golf for a one-day function rather than being registered in the hotel.

Q What did you do after you spoke with Mr. Grossinger on the occasion you have just described?

A I went to my office and either called Mr. Greenberg or waited for a call from Mr. Greenberg. In any event, I spoke to Mr. Greenberg.

Q During that telephone conversation, Mr. Roth, what did Mr. Greenberg say to you and what did you say to him?

A Well, he told me that there were some bills that had to be prepared for monies due the Grossinger Hotel for horsemen's, raceway officials and pressmen's outings that took place in the Grossinger Hotel during the summer of 1970.

Q Mr. Roth, what does the term horsemen mean?

A I would believe it to mean the person who rides the horses.

Q How about pressmen?

A I would say that that would be newspapermen.

Q After Mr. Greenberg told you that, what did you say?

A I asked him when did these outings take place and he told me that they took place on Wednesdays during the summer and after a bit of time he identified

the Wednesdays that they took place in the summer, two in July and three in August of 1970.

Q Did you say anything further to him at that time?

A I asked him did these outings take place.

Q What did he say?

A He said they definitely took place.

Q Was there any further conversation?

A Yes.

Q What was that, sir?

A Mr. Greenberg asked me what the prices were, our sales prices were for green fees, for cart rentals, for lunch and for any gratuities that would be attendant to that lunch and I gave him the information.

Mr. Greenberg then supplied me with the numbers of people who attended these outings and asked that I compute the bills for the five dates in question and then after computing it to get back to him and to let him know what the totals are.

Q What did you do?

A I believe at that time that I called -- sometime after that I called Mr. Grossinger to verify that this is what he wanted me to do and he told me that that is what he wants me to do and I should work it out with

Mr. Greenberg.

Q After that contact with Mr. Grossinger, did you thereafter speak with Leon Greenberg again?

A Yes.

Q Was that in person or on the telephone, sir?

A On the telephone.

Q What did you say to him and what did he say to you?

A I had computed the amounts of the five bills and I told him what the amounts were, which was somewhat under $3000, $2700 or $2800.

Mr. Greenberg indicated that that was not enough; that there was more money due the hotel than that and proceeded to . me if there are any other types of services th . the hotel count have performed during those outings.

Q What did you say, Mr. Roth?

A I told him that there could have been -- they could have stayed later and had dinner. They could have attended a cocktail party. They could have had a couple of drinks at the bar or something like that.

Q What did he say?

A Mr. Greenberg told me that we should

add some charges on for these items and then eventually gave me the amounts of people who attended the dinners, cocktail parties and then that was for the purpose of recomputing and arriving at the new totals.

Q Was that the end of that conversation?

A Basically.

Well, not really. I think I again asked the question, did these outings really take place because if they took place, then why are we going through this dialogue right now.

Q What did he say to that?

A Mr. Greenberg very definitely said that these outings did take place; that the money was due Grossinger's and that although we may not be talking about the exact number of people for the exact number of functions, that there was money that was due the hotel.

At that time I am not sure but I believe I asked him how much and I believe he told me approximately $5000. I am not positive it was at that time or sometime during one of our conversations.

Q Mr. Roth, after that conversation with Mr. Greenberg what did you do?

A I again verified my conversation with Mr. Grossinger telling him what had transpired and asking him

again if this is what he is directing me to do.

Q What did Mr. Grossinger say?

A He said, definitely, yes.

Q After that did you speak with Mr. Greenberg again?

A I spoke to Mr. Greenberg again after I had made further calculations and I advised him of the totals on these five outings and he told me that the totals seemed to be satisfactory and that it would be in order to have statements mailed to him after typing them.

Q Do you recall, sir, what the total was at that point of the bills?

A Somewhere around $6200. In the vicinity of $6200.

Q What did those totals include, what type of services?

A They included green fees, golf cart rentals, sales tax, lunch, gratuities for the lunch, cocktail party charges, dinner charges, gratutities for dinner and some bar charges.

Q Following that conversation with Mr. Greenberg what did you do?

A I again verified with Mr. Grossinger and told him that at this point we arrived at a total and

either over the telephone or in person Mr. Grossinger said, it's fine, but deduct the usual 25 per cent courtesy discount from the bills.

Q What did you do after you spoke to Mr. Grossinger?

A I drafted the final statements, deducted 25 per cent discount, made up a summary statement and had them typed and mailed. I believe that during the last conversation I had asked how to mail the bills and I was told to mail them to Monticello Raceway, attention Mr. Leon Greenberg.

Q Who told you that, sir?

A Mr. Leon Greenberg.

Q Now, had the Grossingers done business with the raceway on other occasions before the events that you have just described?

A Yes.

Q Had the Grossingers done business with Leon Greenberg personally before the events you have just described?

A Yes.

Q Was it at that time and has it been the ordinary course of business of Grossinger's to mail bills to Greenberg and the raceway?

A Yes.

Q When was it, if you recall, Mr. Roth, that the bills about which you testified were mailed to the raceway?

A Some were towards the end of September 1970 or the early part of October of 1970.

Q I am going to show you, Mr. Roth, if I may, what is Government's Exhibit 1A through 1G in evidence.

What are those, sir?

A Those are copies of the statements that were mailed to Monticello Raceway for the outings we just discussed plus a summary statement.

Q Are these the copies which were kept in the records of the Grossinger?

A Yes.

Q Let me show you, if I may, what is Government's Exhibits 2A through 2G. Would you look at those, sir, and tell me what those are?

A Those are the originals of the statements that we just looked at the copies of.

Q Are those then the original statements which were mailed to the raceway?

A Yes.

MR. KINGHAM: Your Honor, may I read from portions of 2A through 2G?

THE COURT: Yes.

MR. KINGHAM: To the jury.

(Mr. Kingham read from Government's Exhibits 2A through 2G in evidence to the jury)

Q Mr. Roth, do you recall the order in which Government Exhibits 2A through 2G in evidence were sent to the raceway?

A 2F, which is the summary statement, August 31, 1970, was sent together with the Exhibits 2A through 2E, which are the individual bills for the five outings and may also have been sent with 2G, but I am not too sure.

THE COURT: When?

THE WITNESS: They were all sent at the same time, somewhere towards the end of September of 1970, perhaps the beginning of October of '70, but I believe towards the end of September 1970.

Q Did the Grossinger receive payment for those bills, Mr. Roth?

A Yes.

Q Do you recall when that was, sir?

A November 4, 1970.

Q Let me show you what is Government's Exhibit 3 in evidence and ask you if you recognize that?

A Yes, I do.

(Continued on next page)

Q What is that?

A That is the check in payment for the outings we just discussed, received from, payable to the Grossinger from Sullivan County Harness Racing Association.

Q What is the amount?

A $4856.16.

Q Do you know who that is signed by?

A That is signed by Leon Greenberg and Sidney Sussman.

Q What is the date of that check?

A October 29, 1970.

Q Showing you Government's Exhibit 4 in evidence, Mr. Roth, what is that?

A That is a photocopy of this check, plus the stub that came with this check, which is stapled to it, and a note in my handwriting, which says, November 4th, 1970, deposited, B. R.

Q Did you have that photocopy prepared before the check was deposited?

A Yes.

Q Mr. Roth, what record was made of the receipt of that check at Grossinger's?

A Well, it was posted on a ledger card or an

accounts receivable ledger card, upon receipt.

Q Let me show you Government's Exhibit 5 in evidence. If you would look at that, sir, and tell the Court and jury what that is.

A This is an account which is set up in the front office cashiering department, and was set up on November 4, 1970, when they received this check of $4856.16, and the anme of the account is Sullivan County Harness Racing Association.

Q Can you explain what the term posting means, Mr. Roth?

A Posting is an accounting record or bookkeeping record that is made, instead of manually, it's made through a machine, and when you make the entry, it's called a posting.

Q When was the posting made for the receipt of the 4856.16 check?

A November 4, 1970.

Q Are there other entries on that card as well as the posting of the receipt?

A Yes.

Q Could you explain to the Court and jury what those are?

A Those are entries reflecting the income

that the hotel received, income that the hotel received for the $4856.16.

Q Can you explain those entries, item by item?

A Yes. Line 2 is a board item, $3140.55, which is all other income other than the golf which represents, which we'll get to, and on line 3 there is a tax posting of $129.74, which is the tax on the, sales tax on the board entry. Line 4 is a golf posting of $1585.87 which represents green fees, golf cart rentals and the tax on golf cart rentals.

Q What is the final balance on the ledger card that you have before you?

A Zero.

Q When was that balance put to zero?

A November 15, 1970.

Q Let me show you Government's Exhibit 6 in evidence.

Could you tell us what that is, Mr. Roth?

A That is a summary by category of income of these five bills that were prepared to Monticello Raceway.

Q Was that summary prepared at your direction ?

A Yes, it was.

Q And in your office?

A In one of the offices under my supervision.

Q And do you recall when that summary was prepared?

A On or about November 15, 1970.

Q What are the categories reflected on that summary?

A Green fees, cart rentals, golf tax, board income, gratuities and tax on the board income and totals.

Q Are those categories then collected into further categories?

A I don't understand.

Q And specifically, sir, if you don't understand the question, what are the categories reflected on the bottom of the exhibit?

A I understand. They are summarized into extra board and the golf breakdown posting.

Q Where did the information on that work sheet come from?

A They came from these five bills that we discussed earlier.

Q Where was the information from that work sheet placed?

A On this ledger card.

Q What was the purpose of the preparation of that work sheet?

A In other words, to be able to reflect the income that we received by way of this $4856.16 check.

THE COURT: Do you mean income or expense?

THE WITNESS: Well, it depends, your Honor, on which way you are looking at it. The hotel --

THE COURT: Are these charges?

THE WITNESS: Yes, that is also a charge to the Monticello.

THE COURT: Charge is an expense?

THE WITNESS: Fop the Monticello Raceway, but it's income to us, so when we received this $4856.16, it's a credit to this ledger account, which establishes a liability on our part, and also it's probably an expense to the track, and the postings in the charge column is income to us, but a charge to the Sullivan County Harness Racing Association, because this account is made up for the Sullivan County Harness Racing Association. The charge is what they owe us, credits would be what we would owe them or what would balance the account.

THE COURT: What was the item of gratuity?

THE WITNESS: The gratuities are gratuities given to personnel for serving the lunch and serving at the cocktail parties, and serving dinner.

Q Mr. Roth, in the regular course of Grossinger's business, does Grossinger prepare ledger cards such as the ledger card that is Government's Exhibit 5, and bills such as the bills that are reflected in Government's Exhibits 2A and 2G?

A Yes.

Q And in the regular course of Grossinger's business, what is the usual order of preparation of the bills and the ledger card?

A The charges for the services come first. The payment comes afterwards.

Q Was that procedure followed in this case?

A No.

Q What was done here?

A We received a check first, and then the income was recorded afterwards.

Q Calling your attention, Mr. Roth, to November 7, 1970, were there any special parties at Grossinger's on that day?

A Yes.

Q What was that, sir?

A The Leon Greenberg bar mitzvah reception and lunch. Andrew Greenberg, I should say.

Q Was that Leon Greenberg's son?

A Yes.

Q Can you describe briefly to the jury what a bar mitzvah is?

A It's a religious Jewish ceremony taking place when a boy reaches the age of 13, indicating that he has now become a man. It's similar to a confirmation at the age of 12 in the Christian religion.

Q Do you know what time the events of the bar mitzvah and reception took place on November 7?

A The reception which followed the bar mitzvah, 12 noon.

Q The bar mitzvah took place in the morning, is that correct?

A Yes.

Q Did you attend the bar mitzvah, Mr. Roth?

A The religious ceremony no.

Q Did you attend the reception ?

A I walked through.

Q Are you familiar with the term billing instructions?

A Yes.

Q What are billing instructions; what does that mean?

A Those are instructions to departments who perform the services so that they will be able to have the proper sales prices so that they can make up the bills, and also the same instructions go to the cashier's department, so when they receive the bills, they can check it and also check it and also post it onto the account.

Q Other than the cashier's department, what other deparment heads would receive such billing instructions in connection with a bar mitzvah such as you have described?

A Well, in this type of bar mitzvah, the bar would receive them, and the dining room perhaps for information on how much gratuities they're going to get, and the cashier's department. That is about it.

Q Were there any such instructions for the Andrew Greenberg bar mitzvah?

A There were none.

Q I will show you, Mr. Roth, what is Government's Exhibit 7A through 7C in evidence, and I ask you if you would look at each of those, sir, and explain to

the Court and jury what they are and what the information is that is contained on those exhibits.

A Exhibit 7A is a bar check for soda served at the Leon Greenberg bar mitzvah.

Exhibit 7B is a bar check for liquor served at the Leon Greenberg bar mitzvah.

And Exhibit 7C is another bar check for liquor served at the Leon Greenberg bar mitzvah.

Q What are the totals on each of those checks, sir?

A Exhibit 7A is $35.65, Exhibit 7B is $1081.20, Exhibit 7C is $686.40.

Q The last two being for liquor, is that correct?

A Correct.

Q I show you also, Mr. Roth, what is Government's Exhibit 8 in evidence, and I ask if you could tell the Court and jury what that is.

A This is an accounts receivable ledger card for the Greenberg bar mitzvah which is kept in the cashier's department at the hotel.

Q When was that ledger card set up?

A On November 7, 1970.

Q And do there appear on that ledger card,

that is Government's Exhibit 8, entries that were made on November 7, 1970?

A Yes.

Q Can you explain what those entries are?

A The first three entries are entries that were made from these bar checks that we just discussed. The first was 35.65 on November 7; the second, and they were identified as bar, meaning it's income that came from the bar, bar revenue, bar charge. The second one was 1008.20. And the third one is $686.40. They are posted on the first three lines of this account.

Q Are there any other postings for November 7, 1970?

A No.

Q What is the balance at the end of that day?

A $183.25.

Q By the way, Mr. Roth, liquor prices reflected in Government's Exhibit 7A through 7C, are those the wholesale or retail liquor prices?

A Retail liquor price, whatever sales prices prevailed at that time for this type of a function.

Q As opposed to the cost?

A As opposed to the cost, yes.

Q Did there appear on Government Exhibit 8, that is the ledger card, any entries for November 8, 1970?

A Yes.

Q What are those entries?

A The first entry is identified as a paid out, the $1200, indicating that there was cash paid by a cashier in the cashier's department to someone.

Q What is the other entry?

A The other entry is a forward posting of $168 identified in the margin as coming from an account for a Greenberg in Room 4505.

Q Is that a room number at the hotel?

A That's right.

Q I show you what is Government Exhibit 9 in evidence, and I ask you to look at Government Exhibit 9 and tell us what that is.

A This is the voucher, paid out voucher which backs up the $1200 posting, cash paid by a cashier on November 8, 1970. That is the posting on this ledger.

Q Does the paid out voucher indicate to whom the cash was paid out?

A Yes, it is signed by Leon Greenberg.

Q Are there any other signatures on there?

A There is a signatur e, H. Bern, which is Howard

Q Who is Howard Bern?

A Howard Bern is the general manager of the hotel, and that is his signatur[illegible]f approval, okaying the $1200 to be disbursed.

Q Is there any indication on that form of the purpose of the disbursement of the $1200?

A Well, written on there, it says, "bar mitzvah" gratuities.

Q Was that information then placed on Government Exh[illegible]t 8 in evidence, the ledger card?

A Just the posting of the $1200 and the date and the paid out.

Q Showing you Government Exhibit 10 in evidence, what is that?

A This is a ledger card which is created when someone becomes a guest in the hotel, and it is the charges for their room and board, for the stay of this individual.

Q For what guest and what period is that?

A Mr. and Mrs. Isidore Greenberg from November 6th to November 8, 1970.

Q Was the information from that ledger card then transferred to the Greenberg bar mitzvah card?

A The total on the bill for the two days was transferred from this bill to this bill.

Q The latter being the bar mitzvah account, is that correct?

A Bar mitzvah account, yes.

Q What is the amount that was transferred, sir?

A $168.

Q What then, Mr. Roth, was the balance of the Greenberg bar mitzvah account at the end of the day of November 8, 1970?

A $3171.25.

Q Are there any other charges on the ledger card, that is Government Exhibit 8?

A Yes.

Q What charges are those?

A There is one other charge, that is on March 12, 1971, another paid out, for $75.

Q And you have before you, do you not, Government Exhibit 11 in evidence?

A Yes.

Q What is that, sir?

A This is a memo of information indicating that the night club manager and the assistant night club manager should receive some gratuities which they did not

receive at the time of the bar mitzvah function.

Q Whose handwriting is that memo in?

A That is my handwriting.

Q What is the amount of the gratuity?

A $75.

Q Is thatinformation then also reflected on the Greenberg bar mitzvah account?

A Yes.

Q What is the total of that account then as of the end of March 11, 1971?

A $3246.25.

Q Mr. Roth, after the bar mitzvah took place on November 7, did you have a conversation with Paul Grossinger about the billing?

A Yes.

Q Can you recall when it was that that took place?

A Some time after the bar mitzvah, within a few days or so. I am not exactly sure what date.

Q And what did Mr.Grossinger say to you and what did you say to him?

MR. FAHRINGER: Objection, may it please your Honor.

THE COURT: Taken subject to connection.

Ladies and gentlemen, in a case of this kind where

the charge is laid in the indictment of a combination of persons engaging in some kind of a plan which is criticized in the indictment, evidence is allowed to come in to the case of conversations with others than the defendant subject to connecting at some stage of the trial, whether that other person was a partner of some sort with the defendant in the enterprise which is criticized in the indictment.

If he was, and that is found under conditions that will be explained to you in my instructions ultimately, then the other person's statement, even in the absence of the defendant, becomes admissible against the defendant as would a statement of any person who is an agent for another or a partner of another in a particular enterprise.

If the connection under the circumstances that will be explained to you is not made in the case, then the evidence which is now taken subject to connection will be struck out. Since you can't build the entire case and the entire story all at one time, the Court allowed the information to be taken on faith, subject to connection

It can't now decide that the connection will not be made. So I must allow youto hear the evidence, and if the connection is not made, it will be struck out and eliminated from the case.

Now that is a long way around of saying that you can only build a house block by block, and you can't put the roof on until you get up there. And if you haven't built the walls, there won't be any roof. So the whole thing falls down.

If you have built the walls, you cap it with the roof later on.

So this is being received subject to connection.

You were asked about a conversation with Paul Grossinger.

MR. INGHAM: That is correct, your Honor.

THE COURT: Which took place within a few days on or about a few days after the bar mitzvah.

Q What did you say to each other?

A I either asked Mr.Grossinger or he told me about the billing instructions for the Greenberg bar mitzvah, andhe told me that he had directed the various department heads concerned with servicing or providing the services for this bar mitzvah to obtain, list all the costs and then to give them to me, and that I should summarize them and then present the costs of the bar mitzvah to Mr. Grossinger, and he would review them with me and tell me what to bill.

Q What did you do then after that conversation?

A Well, I waited for the information to come from

the department heads, and eventually, within a week or ten days, or whatever time it took, the information came in, and I summarized it and arrived at what I would have considered a total cost.

Q By cost, what do you mean?

A That is to the best of our ability to determine the cost of providing the services that make up the Greenberg bar mitzvah function.

Q Showing you what is Government Exhibit 12 in evidence, Mr. Roth, if you would look at that and tell the Court and jury what that is, please.

A This is a summary of the costs of the Greenberg bar mitzvah.

Q And when was that prepared, sir, if you know?

A I would say some time in the latter part of November 1970.

Q Was that prepared at your direction?

A Yes,it was.

Q Can you explain to the Court and jury the entries and categories of entries that are found on that summary?

A Okay. This is number of people, 312 people; food cost of $2383; liquor cost of $522.45; a labor cost or additional payroll costs of $1437.45; cash paid out, which is $1200; and gratuities distributed to bar waiters of

$225.35; for a grant total cost, including cash advanced, of $5768.25.

Q Now, following the preparation of that summary and your conversation with Mr.Grossinger earlier, did you thereafter have a conversation with Mr.Grossinger?

A Relating to this summary?

Q That is correct.

A Yes.

Q Do you know when that was?

A Some time during the latter part of February 1971 or the beginning of March 1971. Prior to March 12, 1971, I believe.

Q What happened between November and February?

A Well, Mr.Grossinger became seriously ill. He went into the Community General Hospital in Liberty, New York, in early December. And then at the end of December went to Florida, to a health spa, where he remained until somewhere in the middle of February, and returned to the hospital, I don't know for what period of time, but I think till towards the end of February of 1970, where I think he recouperated completely.

Q Was it after those events --

A 1971.

Q Was it after those events in 1971 that you had

your conversation with him about the summary?

A That's right.

Q During the conversation what did you say to him and what did he say to you?

MR. FAHRINGER: Same objection, may it please the Court.

THE COURT: Subject to connection.

A Well, I reviewed the costs of the bar mitzvah, and asked him what I should charge, and he told me to charge the cost for the bar mitzvah.

Q What did you do?

A I prepared a bill to Mr.Greenberg for the costs and mailed them.

Q Let me show you, Mr. Roth, if I may, what is Government Exhibit 13 in evidence. Would you look at that, sir, and tell me what that is.

A That is a copy of a statement mailed March 12, 1971, to Mr.Greenberg for the cost of the Greenberg bar mitzvah. It is a corrected statement, because there is an additional $75 added onto it to arrive at a new total.

Q Was that $75 the additional $75 gratuities that was added in March 1971?

A Yes.

Q Prior to the March 12, 1971 bill, do you know

if there was an earlier bill sent to Mr. Greenberg?

A I don't find one in my records, but I would believe there is, because it starts, the statement starts by reading "Corrected statement."

I don't know what time prior to March there would have been a statement. It would have had to be, the earliest --

MR. FAHRINGER: Excuse me, I would object to what would have happened, if your Honor please,

THE COURT: Is there any practice that you followed that would apply in this situation?

THE WITNESS: Well, the statement reads, "Corrected statement," which would indicate to me that there was a prior statement mailed, although I don't remember and I didn't have one in my files.

MR. KINGHAM: May I proceed, your Honor?

THE COURT: Yes.

Q With respect to the handwriting on Government Exhibit 13 in evidence, would you read that, sir, and tell us what that is and whose handwriting is it?

A It is in my handwriting. "See alpha. file in cashier's office," which is a file of accounts receivable that is kept in the cashier's office at the Grossinger Hotel.

Q Showing you Government Exhibit 14, I ask you if you recognize that?

A That is a copy of the April 2, 1971 statement to Mr. Greenberg for the balance due, which would be the balance due for the bar mitzvah.

Q What is the amount of that statement, sir?

A $5843.25.

Q Is there some handwriting also on that document?

A Yes, in my handwriting it says "personal and confidential" written on it.

Q The address on the document, what is that address?

A 190 Broadway, Monticello, New York.

Q Do you know what is located at that address?

A I believe that is -- that was or is Mr. Greenberg's law office.

Q Following the preparation of the April 2, 1971

statement, which by the way is in what amount, sir?

A $5843.25.

Q Following the preparation of that statement, did you have a conversation with Mr. Grossinger?

A Yes.

Q Do you recallwhen that was?

A Either April 7th or April 8th.

Q 1971?

A 1971.

Q Where did that take place?

A Mr.Grossinger's office.

Q Can you describe the circumstances of that conversation?

A He told me to change the amount of the bill to Leon Greenberg from $5843.25 to $989.07, I believe.

Q Let me show you Government Exhibits 15A and 15B in evidence. Would you look at those and tell me if you recognize those, Mr. Roth?

A Yes.

Q What are 15A and 15B?

A 15A is a letter to PaulGrossinger from Leon Greenberg.

Q What is the date of that letter?

A April 6,1971.

Q What is 15B?

A That is the original of the statement, the April 2,1971 statement to Mr. Leon Greenberg.

Q Have you seen those documents before?

A I saw the ori ginal statement when it was mailed out probably, but I have seen them in Mr.Grossinger's office at that time.

Q Is that during the conversation that you have just related?

A Yes.

MR. KINGHAM: Your Honor, may I read from 15A?

THE COURT: Yes.

(Mr. Kingham read from Government Exhibit 15A in evidence to the jury.)

(Mr. Kingham read from Government Exhibit 15B in evidence to the jury.)

Q Is thatyour handwriting on these documents?

A Yes.

Q Can you describe, Mr. Roth, how your writing came to be on there?

A As I explained previously, at the time that we had these two documents -- Mr.Grossinger had these two on his desk, he called me in to his office and told me to change the amount of this April 2nd bill by sending a

new statement out to Mr. Greenberg for $987.09. At that point I had a pencil in my hand, either then or after then, and crossed out the figure of $5843.25, put the $987.09 figure so that a new statement could be prepared with the new amount.

Q Was there any further conversation with Mr. Grossinger at that time?

A Yes.

Q What did he say?

A He told me that the difference --

MR. FAHRINGER: I object, if it please your Honor.

THE COURT: It is taken subject to connection.

A He told me that the difference between $5843.25 and the new figure of $987.09 is $4800-some odd and that that figure is the amount of money that was received from Sullivan County Racing Association on November 4, 1970, for horsemen's outings.

Q What did you do after Mr. Grossinger told you that?

A Iwent into my office.

Q What did you do there?

A Directed somebody to send a new bill out.

Q Showingyou, Mr. Roth, what is Government

Exhibit 16 in evidence, can you tell us what that is, sir?

A That is a copy of the April 8,1971 statement to Leon Greenberg for $987.09.

Q Was that prepared and mailed at your direction?

A It was.

Q Do you know what happened to the bottom of that statement, sir?

A I have no idea.

Q Showing you Government Exhibit 17 in evidence, what is that?

A A copy of a May 4,1971 statement to Mr. Leon Greenberg for a balance due of $987.09.

Q Do you know where the bottom of that statement is?

A I do not.

Q Show you Government Exhibit 18 in evidence, I wonder if you would tell us what that is.

A That is a copy of a statement, dated June 7, 1971, to Mr. Leon Greenberg for the November 7,1970 balance due of $987.09.

Q Do you know where the bottom of that statement is?

A No.

Q Mr.Roth, were the three documents that you just

identified kept in the ...es of the Grossinger Hotel?

A They were.

Q I show you Government Exhibit 19 in evidence and askyou if you can tell us what that is.

A That is a copy of a July 7, 1971 statement to Mr. Leon Greenberg for the balance due of $987.09.

Q Was that and these other three statements, were they all sent to 190 Broadway, Monticello, New York?

A Yes.

Q Following the preparation of the July 7, 1971 statement, did you thereafter have a conversation with Mr. Grossinger?

A Yes.

Q What did he say to you and what did you say?

A It was on July 12, 1971.

MR. FAHRINGER: May I register an objection, if your Honor please.

THE COURT: It is taken subject to connection when it is asked for.

A I went to Mr. Grossinger and I pointed out to him that the balance of $987.09 had not as yet been paid and he then subsequently called Mr.Greenberg and toldme that Mr.Greenberg promised to forward a check for the $987.09, which was received by me on July 13, the following day.

Q Did you make any notation of the receipt of that check?

A Yes, on this July 7 -- copy of the July 7, 1971 statement.

Q I show you, Mr. Roth, what is Government Exhibit 20 in evidence and ask you to look at that and tell me what that is, sir.

A This is a photocopy of a check, dated July 12, 1971, from Leon Greenberg for $987.09 payable to Grossinger's.

Q Is that a copy of the check that you received in payment of the July 7, 1971 bill?

A Yes.

Q Calling your attention once again, Mr. Roth, to Government's Exhibit 8, the Greenberg bar mitzvah account ledger card, are there entries reflected on that card in July of 1971?

A Yes.

Q Could you explain, sir, in order what those entries are?

A On July 6, 1971 the balance on the account was credited with $2259.16 to arrive at the new total due from Leon Greenberg of $987.09.

Q The $2000 figure that you have stated, was that paid by Leon Greenberg?

A No, it was not.

Q What was the purpose of that posting?

A The purpose of the posting was to bring the accounts receivable ledger amount to the amount that Mr. Grossinger advised me that was due from Leon Greenberg. And also to properly reflect the income that the hotel received at the time.

Q Following the July 6, 1971 entries on the ledger card, are there any other entries for 1971?

A Yes.

Q What are those?

A There is a payment on July 13 -- there were

a couple of transfers from one accounts receivable file to another.

Q What do those mean, sir?

A When an account has been finalized, an open account has been firalized in the accounts receivable files that aer in the front office, for someone who is no longer in the hotel, it is transferred to another accounts receivalbe terms city ledger.

Q Is that what the term "city ledger" means stamped on the top of that ledger card?

A That is correct. It is accounts receivable, but it is the location of where these accounts are that this city ledger stamp identifies.

Q Following that city ledger entry, what entries appear on the card?

A A city ledger paid amount of $987.09.

Q What is the date of that payment posting?

A July 13, 1971.

Q Is there a balan c e at the end of that account?

A Yes, zero.

Q What is t he date of the zero balance?

A July 13, 1971.

Q I show you --

MR. KINGHAM: Your Honor, at this point the government would offer in evidence Government's Exhibits 21 and 22, respectively.

THE COURT: Is there any objection?

MR. FAHRINGER: No objection, if it please your Honor.

THE COURT: Received.

(Government Exhibits 21 and 22 were received in evidence)

Q Mr. Roth, calling your attention to April of 1974, were you still employed as the comptroller at the Grossinger's at that time?

A Yes, I was.

Q Calling your attention also to what is Government's Exhibit 22 in evidence, which is before you, I ask you if you recognize that?

A Yes.

Q What is that?

A This is a check drawn by S & H Grossinger, Inc., payable to Monticello Raceway in the amount of $4856.16.

Q What is the date of that check?

A April 17, 1974.

Q Do you recognize the signatures of the

makers of that check?

A Yes.

Q Whose signatures are those?

A That is Paul Grossinger and Elaine G. Etess.

Q Did you have that check prepared?

A Yes, I did.

Q At whose direction?

A Paul Grossinger's.

Q What did you do with it after you had it prepared?

A Gave it to Paul Grossinger.

Q Has that check ever been cashed to your knowledge, Mr. Roth?

A No, it hwas not.

Q Calling your attention to what is before you as Government's Exhibit 21 in evidence, I ask you if you would look at that and tell the Court and jury what that is.

A That is a statement, dated April 18, 1974, to Mr. Leon Greenberg for $4856.16 identified as the balance due for the Greenberg bar mitzvah. The statement was set up as a counter to the entry for this check when it was drawn.

Q The statement, which is Government's

Exhibit 21, was that prepared at your direction, sir?

A Yes, it was.

Q What was done with that statement, the original of that statement when it had been completed and prepared?

A Mailed to Leon Greenberg.

Q What address, sir?

A Care of Monticello Raceway, personal and confidential.

Q Is that the address that appears on the document which is before you?

A The typed address is Mr. Leon Greenberg, Monticello,New York, 12701.

Q Are there also handwritten entries?

A There is a handwritten note made by me on the bottom of the copy of this statement, dated April 18, the same date the statement was made. "Mailed to Leon Greenberg care of Monticello Raceway, personal and confidential" with my initials.

Q Following the preparation and mailing of the April 18, 1974 bill, have other bills for that amount been sent to Mr. Greenberg on a monthly basis?

A Yes.

Q Have those bills been paid to date?

A No.

Q Have you, sir, personally heard from Mr. Leon Greenberg concerning the bar mitzvah bill since your conversations with him in 1970?

MR. FAHRINGER: That is objected to, if it please your Honor.

THE COURT: Overruled. Have you heard from him personally?

A No.

Q With respect to Government's Exhibit 22, Mr. Roth, what kind of a check is that?

A That is a check that was certified. It is a certified check.

Q Do you know what the term certified check means?

A I believe I do.

Q What is that?

A That is a check the proceeds of which were taken from the account on which it was drawn by the bank and held aside in order to be able to pay the payee of the check when it is presented. It assures the party receiving the check that the money will be there

when they cash it, when they want to cash it.

Q With respect to the information, that is the outings reflected, Mr. Roth, on Government's Exhibits 2A through 2E in evidence, to your knowledge did those events ever take place?

A Not now, no.

MR. KING: No further questions, your Honor.

THE COURT: Ladies and gentlemen, we will take a short recess.

(Recess)

(In open court; jury present)

THE COURT: All right, Mr. Fahringer.

CROSS-EXAMINATION

BY MR. FAHRINGER:

Q Mr. Roth, you have known Leon Greenberg for a long time, haven't you?

A Well, since 1969, I think is the first time that I met him. I may have met him before, but I think it was in '69.

Q Did you know him when he was an assistant district attorney?

A No, not to my recollection.

Q Let me, if I may, start with you, you were

aware of the fact, were you not, that horsemen at the Monticello Raceway and when I refer to horsemen I am talking about trainers and grooms and drivers and sometimes officials that worked at the track, you knew that they were from time to time entertained in the hotel resorts, didn't you?

A Yes.

Q As a matter of fact, there had been a procedure of doing that for some years, isn't that so?

A I believe yes.

Q Isn't it true that as far as Grossinger's is concerned, Paul Grossinger, that he used to authorize an outing like that once or twice a year at Grossinger's, but thought of it as being complimentary?

MR. KINGHAM: I object to that.

A I don't --

THE COURT: Just a minute, there is an objection.

THE WITNESS: I am sorry.

THE COURT: I will sustain the objection as to form.

MR. FAHRINGER: Yes, your Honor.

Q Did he not from time to time have horsemen at the Grossinger resort that he did not charge

anything for?

A The records indicate that happened sometimes, yes.

Q These would be what you call complimentary affairs, isn't that so?

A Yes.

Q Where horsemen would come down and they would play golf, they might have lunch, they might have dinner and it would be complimentary?

A I would know that only by looking at the records which I had looked at subsequently some years later and found that to be the case because I do not spend that much -- I don't spend time at the golf course.

Q As a matter of fact, Mr. Roth, that is a question I was about to ask you. I'm glad you raised it. Isn't it true that you don't work up in the golf pro shop?

A That is true.

Q You don't spend any time up there, do you?

A Very little.

Q So that in terms of your own personal knowledge, do you understand my question, in terms of what you know through what you have seen, observed, you don't know whether or not today, in 1970, on July 8, July 22, August 8, whatever the dates are for those bills, you don't know whether or not horsemen were up there or not, of your own knowledge, do you?

THE COURT: Up there meaning the golf course?

MR. FAHRINGER: Yes, your Honor, I'm sorry.

Q At the golf course, do you?

A No.

Q As a matter of fact, as you sit here today and testify under oath, you cannot say, can you, that there were not horsemen on these occasions that are represented by those bills, of your own knowledge, that played golf that day, had lunch, and may have had some

drinks, can you?

A No, I was not there on those days.

Q All right.

A To my recollection in any event.

Q Isn't it true that your hotel, the Grossinger Hotel and I think it's true of the other hotels in the area, operate on what is referred to --

MR. KINGHAM: Objection.

THE COURT: There is an objection here because you have drawn in other hotels.

MR. FAHRINGER: I'm sorry. I will restrict it to Grossinger.

Q Isn't it true that your hotel operates on the American plan system?

A Yes.

Q Now that means, doesn't it, for, well, that means that when a person comes to stay at your hotel, they normally pay a flat rate, it might be $40 a day per person and for that they get their meals, they can, I believe they can eat as much as they want in the dining room, they can order as many dishes as they want, and it's all included in the $40?

A Correct.

Q So that in the dining room, people simply

come in, who are in the hotel, and who are guests, they sit down at a table, they order, the meals are served to them, and they eat their meal and leave, there is no checks written up for them or anything of that sort, is there?

A Not in the main dining room. At the golf clubhouse there are checks that are not formally made up, but someone would sit there and ask if they were guests or not. Sometimes they would get a signature, sometimes they wouldn't. Nothing formal there really.

Q That is what I wanted to ask you, Mr. Roth. I'm glad you raised it. As a matter of fact, one of the ways they keep some check in the dining room proper is that normally a person is assigned to a table, isn't that true?

A Correct.

Q And so the waiter takes care of that person for the whole week or for five days or whatever period of time they're there, isn't that so?

A Yes.

Q All right.

When you are up in the golf shop, one of the problems is that not every guest plays golf, and

there is no organization of everybody sitting at the same table, so if a fellow is a guest at the hotel and he's paying his $40 a day flat rate, and he wants to have his lunch at the golf shop it's included in that rate, isn't that so?

A Correct. We like to restrict it to golfers only.

Q I understand. But if a guest is playing golf he would go up there, he would sit down, the waiter may not know him and he might have his lunch there, isn't that true?

A Generally they try to shortstop it by having someone there that takes a signature, either the waiter when he sits down, or coming in, but the control is loose, I believe.

Q There isn't any formal writing up of a check and putting down what he had or anything of that sort?

A No, just the name and a room number.

Q As a matter of fact in your hotel, with the bulk of your patronage is all keyed to rooms, isn't that so? In other words, I come in and I get room 2402. Everything is charged to 2402, isn't that true?

A Correct.

Q If I come out to the golf course and I want to get a cart and I want to play golf they ask me, they take my name but they say what room number and they put down 2402, isn't that true?

A Right.

Q And then that check by your own internal working methods is in some fashion, that charge is transmitted back to the main office, and on my room number, 2402, there is recorded golf cart, whatever, charges I may have had.

A Yes.

Q Now, isn't it the problem that with the golf outings, the arrangement there, where golfers would come up and play, they weren't staying at the hotel, were they?

MR. KINGHAM: Objection.

MR. FAHRINGER: I misspoke. Forgive me.

Q As far as horsemen are concerned, the Monticello Raceway --

MR. KINGHAM: Objection.

THE COURT: I will sustain that objection.

Q Let me rephrase it.

Mr. Roth, if, let us say 27 horsemen were to

come up to Grossinger's, to play golf, knowing your procedures the way they are, you wouldn't charge them to a room, would you? You wouldn't charge their affair or whatever they spent to a room because they wouldn't be staying at the hotel, isn't that so?

A Correct.

Q All right.

Now, are you familiar with the fact that one of theproblems that persisted at Grossinger's was that you kept finding that people were going out and playing golf and no slips were being made up?

MR. KINGHAM: Objection.

THE COURT: Sustained.

Q Did your investigation show --

MR. KINGHAM: Objection.

MR. FAHRINGER: May I finish the question, your Honor?

THE COURT: Well, I think enough of it has been indicated so as to warrant a rephrasing of your thought.

Q Did you have the occasion in 1970, '71, and even though the later years, to admonish the people at the golf pro shop to always make up a slip when someone played golf?

A Well, I didn't admonish anybody during those years. Part of our procedures was to continually, as we would with anybody else, remind people that the procedures should be followed properly when someone goes to the golf course to paly golf.

THE COURT: What was that procedure?

THE WITNESS: The procedure would be to sign, make sure that everybody signs when they go to the golf clubhouse, but it was just a normal procedure. There was no chronic problem there with people who weren't signing up.

Q May I ask you this: Did you learn that there were occasions where people were going out and playing golf and weren't signing golf slips?

A I was told by somebody in 1974, recently, in the summer of '74 --

MR. KINGHAM: Objection, your Honor.

THE COURT: Yes. I think that you have to limit your response to the period in question.

A I don't recollect, I really don't.

Q Do you, Mr. Roth, know anything about the procedures that were utilized at the Monticello Raceway of having the horsemen sign up on separate sheets and the sheet being taken by a man like Mr. Eiberg or Mr.

Finkelston to the Grossinger's Country Club; did you know anything about that at all?

MR. KINGHAM: Objection, your Honor.

THE COURT: Overruled.

A No.

Q Let me go back to the telephone conversation you had with Mr. Greenberg, and I'm referring to the one that occurred when you indicated that Mr. Grossinger spoke to you and suggested you call Mr. Greenberg to get the dates of these affairs and the information.

Do you recall that conversation?

A Yes.

Q That took place back in 1970, is that correct?

A Correct.

Q I take it that other than the figures you wrote down, you didn't make any notes of the conversation itself, did you?

A No.

Q What you are doing here today is you are testifying from your best recollection, unaided by any notes or report of that event, isn't that so?

A Correct.

Q So you are not representing to this Court

and to this jury that these are the exact words that were used or this is the sequence in which the things happened, isn't that so?

A Not exactly.

Q You are giving us your best recollection?

A Correct.

Q You are not suggesting that some things may have happened that you haven't told us about, or that maybe things happened in a different fashion?

MR. KINGHAM: Objection, your Honor.

THE COURT: Yes. The form of the question should be recast.

Q Mr. Roth, what I'm trying to get to is this: Do you know what time that call took place?

A I don't recollect.

Q Do you remember what day it took place?

A I don't recollect.

Q Have you given us what you recall as the substance of the conversation?

A Correct.

Q Let's go back. When you started speaking to Mr. Greenberg, you, as I understand it, inquired of him that you understood that there was some monies due

and owing the hotel from the raceway, from golf outings, is that so?

A Well, my initial conversation with Mr. Greenberg?

Q Yes.

A My initial conversation with Mr. Greenberg was to ask him about what Mr. Grossinger directed me to do, so that he could give me the details.

Q So you inquired in essence about the golf outings, isn't that so?

A I inquired about what type of monies is owed to Grossinger's by Monticello Raceway, and what the outlings were about, and to get the information that I knew nothing about I was supposed to get from him.

Q Do you recall him indicating to you that he knew that the golf outings occurred on Wednesdays?

A Yes.

Q Do you recall at one point his interrupting the conversation and saying, "I will have to get the records." Do you recall him saying that at all to you?

A I really don't recall.

Q You are not saying it wasn't said. You just don't recall?

A I don't recall.

Q In any event, there came a time when he did give you some dates, isn't that true?

A Yes.

Q And there came a time when he gave you some figures, some numbers of people that had been there, right?

A Yes.

Q Now at that time, Mr. Roth, were you convinced that these affairs had taken place?

MR. KINGHAM: Objection, your Honor.

THE COURT: Sustained.

Q When you were talking with Mr. Greenberg and he was giving you dates and he was giving you the number of people who had been there, did you have any reason to suspect that these outings had never occurred?

MR. KINGHAM: Same objection.

THE COURT: Sustained.

MR. FAHRINGER: Exception.

Q In any event, you were supplied with the number of men and you were given the days, isn't that true?

A Yes.

Q Going back, isn't it also true that when you

spoke to Mr. Greenberg about what was involved, did he indicate to you that he had understood that there was a lunch, there was golf, and began to tell you in general terms what he understood the affairs consisted of?

A Yes.

Q Could I ask you this: Di Mr. Greenberg indicate to you that he had not been at any of these --

THE COURT: Have you been cu- off from your answer?

A I'd like you to give me that question again, because it was sort of a long question and the components of it might have slipped by.

THE COURT: The reporter will read the question to you.

(Record read)

A Yes.

Q Now, may I ask you this question: You didn't figure up anything on the telephone right then for Mr. Greenberg, did you?

A I don't believe I did.

Q You then hung up, made some computations, and called him back up?

A Yes.

Q Was it the same day?

A I don't recollect.

Q It may have been a day or two later?

A Might have been.

Q Incidentally, did you call him at the Raceway?

A Yes, I did.

Q Your best recollection is you spoke to him at the Raceway?

A Yes.

Q All right. And you indicated that your fitures came to about twenty-seven or $2800?

A Yes.

Q Again, I am asking for your best recollection, Mr. Roth, do you recall Mr. Greenberg saying, well it had to be more thanthat, in giving you the total number of the men, that there are 168 men, and there are five days of affairs?

A I don't recollect it phrased that way. I recollect him saying something to the effect that there is more money due the Grossinger Hotel, and my recollection is that that amount of money was approximately $5000.

Q Do you recall him mentioning the number of men and the number of affairs when he mentioned that to you?

A No. The number of dates had already been established by Mr. Greenberg as five dates.

Q Mr. Roth, are you saying that he never, when he talked to you about it having to be more than that, are you saying here under oath that he never mentioned that there was 168 men there and it covered a five day period?

A I don't recollect. I really don't.

Q So you are not saying that he didn't say that?

A I don't recollect.

Q You don't recall. All right. Incidentally, do you happen to know, in 1970, whether that was the year that Grossinger put in, at least modified the golf course or expanded the golf course?

A I am not sure of the date, but I believe it is around that period of time.

Q Will you tell us about that. Did they expand it to 27 holes?

A Yes.

Q Isn't it also true, Mr. Roth, that in the area a lot of the resort hotels had what they called pitch and put golf courses?

MR. KINGHAM: Objection.

MR.FAHRINGER: I think that may be relevant, your Honor.

THE COURT: I will allow it. Did some of these hotels have pitch and puts?

THE WITNESS: I know of a couple of hotels that I had been told had pitch and put golf courses.

Q What I am getting at is this, and I appreciate you work at Grossingers, but is the Grossinger golf course being 27 holes, larger than a lot of other golf courses in the area, if you know?

A Most, yes.

Q At one point you mentioned that Mr. -- when you asked a question of Mr.Grossinger, and I don't recall, Mr. Roth, exactly which conversation it was, he said, "When I want you to know, I will tell you."

A I will let you know. Something like that.

Q I will let you know?

A Yes.

Q Is it true, Mr. Roth, that that was a phrase

that Paul Gross used to use with some frequency?

A That is true.

Q Would he use that phrase, if somebody was bothering him and he was busy and they wanted to get some more information, he would say "I will let you know"?

A "I will let you know."

Q You didn't attach anything sinister to that, did you?

A No.

MR. KINGHAM: Objection.

THE COURT: It has already been answered. Go ahead.

Q Now, do you know the distance, roughly, of the Grossinger Hotel from the Raceway?

A Somewhere about 15 miles, I believe.

Q You say 15 miles?

A Ten miles, 15 miles.

Q If I told you seven miles, would that refresh your recollection at all?

A Well, I never metered it out.

Q Is it about a ten minute drive?

A That's right. Wouldn't that be ten miles?

Q I don't know. Let me ask you about the bar mitzvah at the Grossinger Hotel, you, I presume, have a

lot of bar mitzvahs, weddings and affairs of that sort, isn't that true?

A Depends on what you mean by a lot. We may have anywhere from five to ten at the most a year.

Q All right. There is two ways of charging for a bar mitzvah, isn't there? There is what they call the, I believe -- correct me if I am wrong -- the flat rate where you charge so much a person?

A Yes.

Q And in that situation, if I were going to engage the hote for a bar mitzvah you might fix a rate of $20 per person, $25 per person, and that would include the food, the liquor, and a lot of incidentals that would be built into that price, right?

A There are sales made that way.

Q The other way that you can do it is, and I ask yc if this is unusual, where you do it on an itemized basis, where you tell the patron, we are going to charge you for how much liquor you use, we are going to charge you for how much food you use, and so on and so forth?

A Yes.

Q On the food, wjuldn't you formally do this, that if you were going to charge the liquor and you were going to charge the food, you would still work the food out on the

basis of so much per person, wouldn't you?

A Yes.

Q In other words, you might say, if you want to do it on an itemized basis, what we will do is, we will keep track of all the liquor you use, we will take care of the orchestra, we will take care of the flowers and some of the other items, but on the meal we are going to charge you $5 or $10 a person?

A Yes.

Q All right. In that situation, what you do is, and I presume you do it, but you tell me in either situation, either the flat rate or on the basis of an itemized accounting, you set up an accounts receivable card, isn't that so?

A You always set up an accounts receivable card.

Q But again, and if I may, Mr. Roth, there is no room that you charge that to, that doesn't go into a room filing system, that would go into a master account?

A Generally, be a master account.

Q That you would label, as in this situation, Greenberg bar mitzvah master account, isn't that correct?

A Correct.

Q What you would ordinarily do is, the charges that were incurred for that affair would be posted on that

receivable, on that ledger, isn't that so?

A That is true.

Q Do you sometimes refer to that ledger as the city ledger, a city ledger?

A No.

Q You never call it that?

A No.

Q It is an account receivable?

A It doesnot become a city ledger until it is transferred and finalized from the active accounts to finalized accounts for people who are no longer in the hotel.

Q But in any event, this accounting procedure is set up in such a way that youcan then bill the patron after you have finished the bar mitzvah, you have the entries of the costs that you have allocated to that affair, and you can send them a bill for that amount?

A Yes.

Q Now, there was a ledger on one of the exhibits here that was read,"See Alpha file. " Does that mean see the alphabetical file of the accounts receivable?

A There is a file called an alpha file, which is an alphabetical file, located in the cashier's office, which is part of the current accounts receivable balance --

Q To be contrasted with a situation where you would go to the room number?

A That's correct.

Q Your ledgers are, you use the phrase, don't you, pitted?

A Yes.

Q And there are an awful lot of these cards, these ledger cards that are pitted under rooms?

A Correct.

Q Where you go to 2402, you would pull that out, that would have my name on it if I were staying there and you would have the charges. The alpha file is kept alphabetically under the name of the client, isn't that so?

A Under whatever name they have the bill for.

Q The affairs?

A Yes.

Q Now, on the master account you have these symbols that you spoke to us a little bit about. There is the bar symbol. That normally includes alcoholic charges, liquor, wine, beer, any of the refreshments that fall into that category,isn't that so?

A Yes.

Q Board would be meals?

A Yes.

Q You have an entry taxes?

A Yes.

Q And you have an entry -- as a matter of fact, these machines are set up so that you can create any symbol, like room?

A Well, machines are pre-set up. Each machine is a combination of approximately 20 total buttons, it is like 20 adding machines in one machine. Each button is a motorized key, and it prints the category that you are printing on the ledger and accumulates a total which is totaled at the end of each evening.

Q What I am suggesting though is you can pretty much put all charges on that account into one category or another, can't you?

A Yes, you can.

Q Mr. Roth, I take it that you were not present when Paul Grossinger spoke to Leon Greenberg about the arrangements he was going to make for the bar mitzvah, when they spoke face to face?

A I was not.

Q So that in terms, again, of your own knowledge, I am not speaking of what you may have learned from Paul Grossinger, from your own knowledge of observing and hearing the conversation that they had between the two of

them, you don't know what the arrangements were, do you?

A I didn't hear their conversation so I don't know.

Q All right.

MR. FAHRINGER: I wonder, with your Honor's permission, I have a blowup of one of the Government exhibits and I wonder if I could show it to you and Mr. Kingham and I would like to use it.

THE COURT: Don't show it to me. Show it to Mr. Kingham.

(Pause.)

MR. KINGHAM: No objection, your Honor.

MR. FAHRINGER: Do you think, your Honor, I could stand over by the witness with the easel?

THE COURT: Yes.

MR. FAHRINGER: Inci-entally, I have marked this B for identification, with your permission.

THE COURT: What is the number of the exhibit in evidence?

MR. FAHRINGER: The exhibit in evidence is Government Exhibit 8.

THE COURT: That can be marked 8A, then.

MR. KINGHAM: No objection.

THE COURT: Let me give the witness 8, and then

you will both have it.

(Government Exhibit 8A was received in evidence.)

Q You are examining the exhibit, or I guess it is a photocopy of Government Exhibit 8, and we have a blowup here, and this refers to the entries that you have testified to under direct examination. Now, November 7th was the date of the bar mitzvah, is that correct?

A Right.

Q And the first entry that is listed there is the entry of $35.65.

A Correct.

THE COURT: Off the record.

(Discussion off the record.)

Q That entry reflects the charge of soda, isn't that so?

A Yes.

Q And Mr. Kingham showed you -- this is Government Exhibit 7A -- and that is the 85 splits of mixed soda.

A Looks like 85.

Q In any event, it reflects the charge for soda during the affair?

A Yes.

Q Incidentally, that figure of 35. 65 is not a cost

figure. That is a retail figure, isn't it?

A Yes.

Q All right.

Now the next figure that we have listed on the master --incidentally, this account is labeled, the Greenberg bar mitzvah master account, isn't it?

A Correct.

Q Now, the next charge, which is also dated November 7, 1970, is bar, and that is $686.40, isn't it?

A Yes.

Q May I ask you if you will look at Government Exhibit 7, do you have the card there?

A 7C?

Q 7C, that pretty much includes wine and cordials and things of that sort?

A Yes.

Q For instance, the first one on that charge --

THE COURT: I don't see any wine on 7C unless I mistake the character of liquor.

MR. FAHRINGER: Down at the bottom I think it says champagne.

A Beaujolis, champagne, Grand Marnier.

MR. KINGHAM: The copy numbers may be rev-rsed. It may be 7B on your Honor's copy.

THE COURT: That was marked 7B on the copy.

Q For instance, it has there, one bottle of Galiano.

A Yes.

Q It is listed at $20. That would be a retail price, wouldn't it?

A Yes.

Q And so on down the line, the B&B, $20, Cherry Hering, $20, those would all be retail prices and not cost prices?

A Yes.

Q On November 7th that particular charge was posted on the Greenberg bar mitzvah master adcount as the second item, isn't that so?

A Yes.

Q Now, the third item again dated November 7, that is marked "bar," is $1081.20, is that correct?

A Yes.

Q That is reflected in Government Exhibit 7B and that pretty much includes what I would call whiskey, it is Scotch, Beefeater Gin, Smirnoff, Jack Daniels, Old Granddad, would that be?

A Yes.

Q And that is all charged at retail, isnn't it, the total at least?

A It looks like that to me.

Q That comes to $1081.20?

A Yes.

Q So the entries that were made on November 7th contemporaneously with the bar mitzvah were up to that point only liquor charges, isn't that so?

A Yes.

Q Now, the next entry is the $1200 paid out, is that so?

A Yes.

Q You have seen a slip, a Government slip that is marked on the face of it -- I am referring now to Government Exhibit 99 -- and that is I guess your form for a payout slip and that is park "gratuities," isn't it?

A Well, someone asked for it, I assume, for the identification to be put on the paid out slip. I don't know who.

Q In your experience --

A In my exprience that would be gratuities.

Q Let me ask you about that, if I might, Mr. Roth. When you have an affair, which is a large affair and you are going to be entertaining two or three hundred people, does the hotel have some kind of an arrangement or a standard or a scale for gratuities?

A If the party that is buying the function wants to tip, then we will tell them what the tip should be.

Q When you figure your flat rate and if I want to come there and I want to say how much is it going to cost me a person, don't you ordinarily in the normal course of your business figure in a gratuity for your help?

A We either do one of two things. We tell them what they think they should get. We ask them if they would like us to add it on and distribute it to the help or we give them the opportunity to tip as they wish.

Q Now, there are a number of ways of doing that, aren't there? In other words, procedures?

A Yes, either one of those two ways.

Q Isn't one of the things that you can do is if you suggest $1200 in gratuities and the person says "That is fine," then you can issue that cash and ordinarily the maitre d' would distribute it to all the people, wouldn't he?

A That could be done if he asked somebody to do it, but generally I would say the individual that signed the check, that party got the money and made the distributions themselves.

Q But it doesn't happen on every occasion, does it?

A No, he could have just asked somebody to distribute it for him. Given him a list or something like that.

Q Don't you have this situation where someone can come up to the patron and say, look, this is to cover the gratuities, he would sign the gratuities slip and that person would assume the responsibility of going around to each one of the persons and distributing the money?

A I don't think that we act as that kind of a conduit.

Q Let me ask you this: Hasn't Dave Geiver -- he is the maitr- d'?

A Yes.

Q Hasn't he actually distributed the money himself to the help?

MR. FAHRINGER: Objection.

THE COURT: Sustained.

Q Let me just go on for a minute, Mr. Roth. In any event, the next item here on the master bar mitzvah is the $1200 that you have said in your judgment would be for gratuities, is that right?

A According to the identification on the slip.

Q Incidentally, that is dated November 8, isn't it?

A Yes.

Q That would be the day after the bar mitzvah, right?

A Yes.

Q Then the one other itme that we have in November is the $168 for the room.

A Yes.

Q Now, that room is reflected somewhere else in Government Exhibit 10 --

THE COURT: He has it.

THE WITNESS: I have a copy of it.

MR. FAHRINGER: May I then stand back here.

Q That room was sold to Sally Greenberg and Isadora Greenberg for $80 a day?

A Yes.

Q That wouldn't be at cost, would it?

A No.

Q So up to this point, as of November 8, the day after the bar mitzvah, everything that is entered on the master account for the bar mitzvah is liquor, gratuities and this one room, isn't that so?

A Yes.

Q Isn't it also true that all of those entries are at full price or retail price?

A Yes.

Q We then get to one other entry here on March 12 which is $75, that was a gratuity that was picked up, correct?

A Yes.

Q So that as of July of 1971, July 13th, when the account was balanced out, the only thing that was ever entered on the bar mitzvah account was the liquor, the gratuities and this one room, isn't that so?

A Yes. Incidentally, that paid out of $75 was probably distributed in the manner in which you had explained before. An instruction to give $75 and charge it to the Greenberg bar mitzvah master account.

Q I was going to ask you about that because in that

situation isn't the likelihood that he wouldn't have been there, they would have taken the $75 --

A Some message came to me from somebody saying that these people were not taken care of and to please add on the $75 and distribute it.

Q And it was just posted?

A And distributed.

Q Right. I have another blowup here of Government Exhibit 12.

MR. KINGHAM: No objection,your Honor.

MR. FAHRINGER: May I use this, your Honor? 12A.

Q Now, 12A that is presently on the easel in front of the jury, do you have a copy of that in front of you?

A Yes, it says 12.

THE COURT: 12A is the larger version of 12.

THE WITNESS: I see.

Q You have the Government exhibit. This is what you have referred to as the cost breakdown of the bar mitzvah, isn't that so?

A Right.

Q Now, you have under the food cost, $2387, isn't that so?

A Yes.

Q Under that you have got the liquor cost at $522.45.

A Yes, sir.

Q Now we get down to what you have labeled additional payroll costs.

A Yes.

Q Isn't it true that in your enterprise at the Grossinger and other of the big hotels, you have a special arrangement with people who come in and work a bar mitzvah or a weeding, where they work three or four hours, a waitress, a waiter or a busboy, a $35 flat rate, the union contract provides for that, doesn't it?

A Yes.

Q Doesn't your union contract provide that on a special affair or a function affair the person gets $35 flat amount for three hours or three hours and a half, whatever they work?

A It is $35. Now it is either 35 or 50, yes.

Q In that situation, isn't it true that in your hotel business no gratuity is added to that?

A To the $35?

Q Yes.

A I would say generally not if the party that is paying the bill understands that that is included.

Q In other words, the practice is, I am addressing myself now to the business of Grossinger's, if the person gets that flat $35 rate, the waiter or the busboy, he doesn't expect on top of that a gratuity, does he?

MR. KINGHAM: Objection.

THE COURT: Sustained.

Q If you were proposing to a person a rate for a bar mitzvah and you said, we are going to bring in 14 waitresses and we are going to bring in seven busboys and we are going to pay them the regular $35 flat rate, would you suggest to them that then they oay a gratuity on top of that?

MR. KINGHAM: Objection.

THE COURT: Sustained.

Q Let me ask youthis, then, if it please your Honor.

Has it been your experience in the course of Grossinger's where you work on a function rate of $35 per person for a special affair, has it been your experience and is it customary in your business to add onto that a gra uity?

MR. KINGHAM: Objection.

THE COURT: You have got two questions in there. Break them up.

Q First of all let me ask you this, Mr. Roth: Maybe this would be the way to go about it. You have certain affairs where people do not get a flat $35 rate, isn't that true? If a person is working in the dining-room, for instance, a waiter, he is paid on an hourly basis, isn't he?

A Correct.

Q He gets $2 an hour, $2.50 an bur, and then what he expects in terms of his compensation on top of that is at the end of the week or whatever he gets a gratuity?

A Yes.

Q Isn't it true that in the course of your busikness when you are running these special affairs and you bring people in to work those three hours and pay them $35 an hour, ordinarily they don't receive a gratuity?

THE COURT: They don't get paid $35 an hour not even in these times.

MR. FAHRINGER: I am sorry, your Honor. I misspoke.

Q $35 an affair, ordinarily they wouldn't get a gratuity on top of that, would they?

A Not unless the individual wanted to reward them more because they felt that their services were extra-ordinary.

Q Could I askyou just from your experience over the years with bar mitzvahs, would it be ordinary for a person who has had an affair where the people were paid $35 for the affair, the waitresses and the busboys to pay an additional $1200 gratuity?

MR. KINGHAM: I object, your Honor.

THE COURT: Sustained.

Q Let me ask you this --

THE COURT: This is an area of argument. Why people pay tips is personal, isn't it?

MR. FAHRINGER: Except that --

Q Mr. Roth, isn't it true that to this extent: When a person -- let's assume a person has never had a bar mitzvah before. Don't they look to your guidance a little bit about gratuities and what is customary and what is usual?

A To whoever makes the arrangements. I do not get involved in making these arrangements.

Q In any event, let me just ask you this, if we analyze the bill right. These people, the 14 waitresses and the 7 busboys got $735 for working that affair, right?

A Yes.

Q On top of that was added a gratuity of 15 per cent for what appears to be the bar waiters and that came to $225.35, didn't it, right?

A Different employees.

Q Different employees, I understand.

Then there is an additional charge of $1200

for gratuities on top of that?

A That is not a charge. That is a cash advance.

Q Pay out?

A Of $1200.

Q If it was handled like the $75 where it was picked up later, somebody took that out and distributed it to the help, isn't that true?

MR. KINGHAM: Objection, your Honor.

THE COURT: Sustained.

Q Let me ask you this, then: For this bar mitzvah on your cost charges here, the amount of monies allocated to paying the people who worked the bar mitzvah would be $1437.45 that you have as labor time, overtime and labor, right, do you see that figure?

A Yes.

Q $225.35, right?

A Yes.

Q And then $1200 gratuities?

A That is cash advance which were earmarked for gratuities and they must have been additional gratuities given to somebody.

Q Could I ask you this from your experience of working in Grossinger's. An affair of this size

where there would be 250 to 300 people, would you have about three captains?

A That is fair, yes.

Q You would have a maitre'd?

A Yes, included in that three probably.

Q And then so that ordinarily these people, a captain or a maitre'd would receive a gratuity, wouldn't they, for an affair like this?

A Generally they would if the party that is running the function would ask the salesman or the service person what they think they should receive.

Q Is that done, incidentally, frequently?

A It is done from time to time unless the person is experienced with these types of affairs and knows themselves that certain people get tipped.

Q It was based -- incidentally, did you actually compute these figures? You didn't figure the food costs yourself, did you?

A I received schedules from the individual department heads and based upon what they sent, then I checked their calculations and added them.

Q You didn't check the costs, did you?

A This is the cost to the best of our ability. In other words, the cost of labor is calculated at the

prevailing labor rates at that time times the number of hours and the cost of liquor would have been computed by the bar manager from prevailing costs at that time and I would most likely check it, if I could, or accept it if I thought it was correct.

Q Let me ask you this: Did you go in, just simply did you go in with the food costs, the people in the kitchen who computed the food costs, did you go in and check that against the bills or anything of that sort for the cost of meat?

A Check it against which bills?

Q The bills, I presume you buy meat from somebody, that is the cost?

A I didn't. This was given to me by the executive chef steward who I presume knows what the costs should be.

Q But you didn't investigate it, you didn't check it?

A No.

Q Eventually then you sent out a bill based upon that 5000 and I think there was $75 eventually added on, $5843.25, right?

A Yes.

Q When that bill was sent out on March 12, 1970,

as far as your accounting procedures are concerned --

THE COURT: Did you say '70?

Q March 12, '71, I'm sorry.

You had received $4856.16 from the Monticello Raceway for these horsemen's outings on November 4 of 1970, isn't that true?

A That is true.

Q You put that in the Sullivan County Harness Racing Association account?

A That is true.

Q Now, in March of 1971, about five months later, you sent out a bill for 5800 or the lesser figure, but eventually it got up to $5843, isn't that so?

A You said -- what lesser figure?

Q The first bill was 5700 and then you added on $75 so at some point we get a bill for the so-called cost of the bar mitzvah $5843, isn't that right?

A Yes.

Q So that at that point in March of 1971 or April of '71, if the $75 was added then, what you had was you had received $4856 on the raceway account and you had an account receivable of $5843, is that right?

A I had no idea at that time that one tied into the other.

Q I am not saying it did. All I am saying is did you have in your hotel in the Grossinger Hotel you had received $4856 and you still had charged or billed --

A We had a closed zeroed out account for the proceeds received from the Monticello Raceway for horsemen's outings, closed and paid bill filed.

Q You had an account receivable and you had charged them $5800-and-some for the bar mitzvah?

A We had an account receivable that had reflected only the sales and the cash advance up to that point of $3000-some-odd. We had not brought that account up to the cost. We had not adjusted that.

Q Mr. Roth, I am not asking that. You sent a bill in March of 1971 for $5800-some-odd?

A Yes.

Q Incidentally, no one ever took Mr. Greenberg into Grossinger's as far as you know in January or February of 1971 and said, look, here's our ledger account, here's how we handled all this stuff. All he had was a bill from you people that he was obliged to pay as far as you were concerned, right?

A Yes.

MR. KINGHAM: Objection, your Honor.

THE COURT: Well, the witness has preempted the field.

Q In any event, as you pointed out, Mr. Roth, what you also had was, you had this large -- I'm sorry, I didn't mean to say large -- you had your account receivable, which was the Greenberg bar mitzvah accounts, and that showed a balance in 1971 of the $3246.25, didn't it?

A That is correct.

MR. FEHRINGER: Will your Honor bear with me for just a moment.

(Pause)

Q Incidentally, do you know whether Paul Grossinger was at the bar mitzvah?

A I believe he was.

Q Incidentally, he didn't go into the hospital I believe you told us until December of 1970?

A '70, yes.

Q And so he was around Grossinger's as far as you know, at least for the bar mitzvah and for a period of time after the bar mitzvah?

A Yes, he was in the hotel a good part of which he was sick. From time to time he was sick.

Q When he went to the health spa in Florida, does he go down there for a weight problem?

A Well, I recollect that particular time it was a doctor -- the doctor that took car of him recommended that he go to the health spa, I don't know for what reason. It had something to do with his recuperating from what originally was supposed to be a heart attack. I don't think it ended up that way.

Q As a matter of fact, has he been down just recently to Florida on --

THE COURT: I don't think that is of any importance.

MR. KINGHAM: Objection, your Honor.

THE COURT: Let's stick to this case.

Q When you do your banking, do you ordinarily send all your deposits up in a bundle to the bank or down to the bank as the case may be?

A Yes. There are deposit slips and checks attached contained with the deposit slips.

Q How are those transmitted to the bank?

A By house car generally.

Q In other words, they are delivered?

A By houe car in which there is a security generally, a security man.

Q When you say a house car --

A A hotel car.

Q That is used for deliveries?

A A hotel vehicle.

Q Incidentally, have there been occasions when things have been delivered between Monticello Raceway and Grossinger's?

A I don't know.

Q Do you deliver papers to places around that are close by if something has to be taken over right away.

A I don't get involved in that so I don't know.

Q In any event, what time do the deposits normally go into the bank?

A There is no normal time. They can go in at any time between 11 a.m. and 3 p.m.

Q Is your clearing bank the Franklin Bank in New York City?

A It was at that time the clearing bank for the Sullivan County National Bank.

Q Which was the bank you banked at?

A Yes.

Q In 1970, Mr. Roth, when you spoke to Mr. Greenberg about these outings, these horsemen's outings,

did you ever have the occasion to go up to the pro shop, talk with the pro or call anybody up there and say, look, did we have these outings? Whre there horsemen from the Monticello Raceway there?

A I had no reason to ask that question.

Q I said it you took his word for it?

A I would say my boss, the president of the hotel, who is also on the board of directors of the track, also at that time beneficial owner of half of the stock in the hotel, plus Mr. Greenberg, who was an attorney, director of the track, president of the track, general manager of the track, if they both tell me to do something, I don't think that I have the time to audit their word. I have plenty of other things to do.

Q I am not suggesting to you that you should.

A To go out and check and find out whether what they are telling me is true.

Q I am only asking you did you.

A I did not have reason to.

THE COURT: On that note we will recess now until tomorrow morning at 10 o'clock.

(Adjourned to November 6, 1975, at 10 a.m.)

United States of America

vs. 75 Cr.1010

Leon Greenberg

New York, New York.
November 6, 1975 - 10:00 A.M.

(Trial resumed. )

(In open court; jury present.)

B E R N A R D R O T H resumed.

THE COURT: Good morning.

All right, Mr. Fahringer.

MR. FAHRINGER: If it please your Honor.

CROSS-EXAMINATION (continued)

BY MR. FAHRINGER:

Q Mr. Roth, yesterday we were going over some of the items of the computations of the bar mitzvah and I show you what I have in my hand, which is marked as Defendant's Exhibit S for identification.

Do you recognize that?

A Yes.

Q Why don't youtell us what it is.

A It is a cost of the food served at the Greenberg bar mitzvah function.

Q On November 7, 1970?

A On November 7, 1970.

Q Was this an exhibit that the U. S.Attorney went over with you and discussed with you in preparation for your testifying?

A Yes.

MR. FAHRINGER: Your Honor, I would offer this in evidence.

MR. KINGHAM: No objection.

(Defendant's Exhibit S was received in evidence.)

Q Mr. Roth, when in the hotel business, if you know, when you are computing the retail price of food, what is the basis for your cost retail allocation? Is it 50 per cent raising of the price for retail or is it 100 per cent or what?

A Well, I would say the cost could vary anywhere from 25 per cent to 33-1/3 per cent of sales price, which would mean its sales price would be three to four times what the cost would be. Most likely three times, 33 per cent, I would say, 35 per cent, something like that.

Q May I use this example? If it is inappropriate please tell me, if a steak cost you say $2, perhaps I should relate it to a pound, if a steak cost you $1 a pound

and you would sell it anywhere from two to three times that amount --

A Yes, but there is more costs, yes.

Q Let me ask you whether I understand this entry, I am referring now, of course, to Defendant's Exhibit S in evidence. There is an entry here at the very bottom on the second page that says "Bar mitzvah, $75." Would that be your cost?

A This is computed by the executive chef steward in the hotel and was then given to me, which would be the cost that he has estimated or computed as the cost and was given to me and accepted by me as the cost. I did not compute that cost.

Q I notice there is one item here, for instance, six spice corn beef, what would that be? Six spice corn beef.

A Well, that is corn beef,that is prepared in some manner.

Q Do you know what the "six" would be, by any chance?

A I have no idea, it could be six corn beefs. Probably not six ponds, it is probably six corn beefs.

Q The cost price is listed at $120 for six corn beefs.

A That is the cost that the executive chef stewart provided.

Q Over here thre is 330 fancy canteloupe baskets at $165, would that be -- I take it all these figures on the righ-thand side here purport to be cost prices, is that correct?

A That's right.

Q Now, do you know Lazarus Levine?

A Yes.

Q He is a lawyer that resides or has his office in Liberty, New York?

A He does.

Q Do you know of your own knowledge that he has acted as Mr. Grossinger's counsel?

MR. KINGHAM: Objection.

THE COURT: He has acted as Mr. Grossinger's counsel.

MR. FAHRINGER: Well, as his attorney, your Honor.

THE COURT: Sustained.

Q Have you been in the presence of Mr. Levine and Mr. Grossinger at the same time, all three of you been together?

A Yes.

Q Do you know on those occasions, and I am talking particularly since 1970, between now and 1970, do you know whether Mr. Levine has represented Mr.Grossinger in legal matters?

MR. KINGHAM: Objection, relevancy.

THE COURT: Sustained.

Q May I ask you this: How long have you lived in the area of Liberty or Grossinger's?

o For over 16 years. A little over 16 years.

Q Incidentally, you live right in the hotel, don't you?

A I do.

Q I take it your arrangements with the hotel are that they provide you a living place, is that so?

A Correct.

Q They provide you with your meals?

A Correct.

Q As part of your compensation and in addition to that, I presume, you receive some salary?

A Correct.

Q Incidentally, may I ask you, do you own stock in the Grossinger place?

A No.

Q Do you know from your living in that community

and being familiar with both Mr. Levine and Mr. Greenberg that Mr. Levine dislikes Mr. Greenberg?

MR. KINGHAM: Objection.

THE COURT: I think I ruled this line out, Mr.Fahringer.

MR. FAHERINGER: I am sorry, your Honor.

Your Honor, then I don't pursue it any further.

Q Mr. Roth, yesterday you identified several of the documents here that are marked Government exhibits. They were bills that had the bottom removed. Do you recall that? There were two documents, I guess three of them here, Government Exhibits 16, 17 and 18. I show you these bills and ask you this question: Were they in the Grossinger bills?

A Yes.

Q As far as you know, were those documents that have a portion of them torn away, were they always in the Grossinger file?

A Yes.

Q May I ask you this: Do you know who tore away the bottom of the bill?

A I do not recollect.

Q I presume whoever did that was someone who worked for Grossinger's.

A It may very well have been me.

Q Did you attach any significance at all to tearing away the bottom of those bills?

A No, I may have had notes on there relating to other matters or that may have related to this matter. I tried to recollect what was on the bottom of those and I cannot recollect it. I don't attach any meaningful significance to them.

Q In any event, you may have town something away that was written on the bottom of those bills and that would have been destroyed?

A Yes.

Q Now, on this matter of whether you wrote on one of the envelopes "Personal and confidential" in an envelope that you sent to Mr. Greenberg, have you had

the occasion on or have you on other occasions when you have sent letters out or documents out marked them "personal and confidential"?

A Yes.

Q Is there anything about that in connection with this case and the facts you have related here that is sinister?

MR. KINGHAM: Objection, your Honor.

THE COURT: Sustained. We will let the jury decide all of the motivations, Mr. Fahringer.

Q Don't answer this question in the event there is an objection, Mr. Roth.

MR. KINGHAM: I object to that, your Honor.

MR. FAHRINGER: I am sorry, your Honor.

Q When you wrote "personal and confidential" on the -- withdrawn, I am sorry, strike that.

In any event, you have indicated that you have done that on other correspondence that you have sent to other people?

A Yes.

Q Mr. Roth, during the years that you have known Mr. Greenberg and have had dealings with him, have you ever had any reason to question his honesty?

MR. KINGHAM: I object, your Honor.

THE COURT: Sustained.

Q In your dealings in this situation in 1970 and 1971 when you spoke with him over the telephone and had the conversations that you have related to us here about these horsemen's outings, was there anything that he ever said to you or anything he ever did that caused you to question his honesty?

MR. KINGHAM: Objection.

Same objection.

THE COURT: Overruled.

A No.

Q May I ask you this: During 1970 and during 1971 did you ever agree with anyone to defraud the Monticello Raceway?

A No, definitely not.

MR. FAHRINGER: I think that is all the questions I have, your Honor.

MR. KINGHAM: May I have a moment, your Honor?

THE COURT: Yes.

(Pause)

REDIRECT EXAMINATION

BY MR. KINGHAM:

Q Mr. Roth, let me show you Government's

Exhibit 8 in evidence, the ledger card entitled "Greenberg bar mitzvah master account" and calling your attention to a blue slip which appears to be stapled to that document.

Could you explain to the Court and jury what is on that slip and how, if you know, it came to be attached to that document?

A This slip is an advice that is prepared by the dining room, generally the maitre d' or a captain in the dining room, for the purpose of identifying the function or person or parties who are served and putting down the number of people that are served and then given by the dining room to the cashier's department, the front office cashier's department.

Q When, if you know, was that done in this case?

A It is dated November 7, 1970, so it must have been done on that date and it may have been transmitted that day or the next day to the cashier's department.

Q Was that slip attached to the ledger card in your files?

A Yes, it was.

Q That slip does not appear on the blowup, Defendant's Exhi-it 8A, does it?

A No, it does not.

MR. KINGHAM: Your Honor,may I read from the slip on the front of the exhibit.

(Mr. Kingham read from Government's Exhibit 8 in evidence to the jury)

Q The pen signature or writing on there, sir, do you recognize that?

A I think it is the maitre d's signature, but I can't be certain. That would be Dave Geiver, but I am not positive.

Q Mr. Roth, in answer to questions by Mr. Fahringer concerning the difference between a flat rate charge and an item by item charge for an event such as the bar mitzvah, when in the course of preparation for such an affair would it be determined by the Grossinger whether there would be a flat rate or an item by item charge?

A Prior to the function. Sometime prior to the function.

THE COURT: Is there any record of that?

THE WITNESS: All the records that were found --

THE COURT: No, is there any record of the sale, the proposed order or sale?

THE WITNESS: No, just a work sheet which advises the department heads individually how to service the function.

Q When billing by the hotel is to be at cost, what procedure is followed, Mr. Roth?

A The costs are computed and upon computation they are recorded as a charge to whoever is paying for it.

Q With respect to Government's Exhibit 8, which is before you, the ledger card, and specifically with respect to the entries for November 7, in a situation where billing is to be at cost, are retail liquor prices computed?

A The computation of retail liquor prices would generally be made by the bar manager --

THE COURT: That is not the question he asked you.

THE WITNESS: Excuse me.

THE COURT: Read the question to him again.

(Question read)

THE COURT: Do you want to rephrase that question.

MR. KINGHAM: I will, your Honor.

A I would say that sometimes yes, sometimes no.

That is why I am hesitating.

THE COURT: Rephrase your question so as to make it clear.

Q In the situation where billing is to be at cost, Mr. Roth, do you know the purpose for preparation of retail liquor prices?

A Yes.

Q What is that, sir?

A So that the bar waiters and waitresses will receive their percentage gratuity based upon the sales price rather than the cost price.

Q And is that sales price thereafter adjusted?

A If it's to be at cost, then it will be adjusted to cost.

Q Does that affect the gratuities?

A No.

Q Shwoing you, Mr. Roth, what is Government's Exhibit 9 in evidence, the November 8, 1970 payout slip for $1200, in a situation, Mr. Roth, where the hotel is to distribute gratuities on behalf of the person who is holding a function, how are such distributions recorded?

A Generally it would be added on to the price and distributed through the payroll department.

Q Was that done in this case?

A No.

Q And what, sir, in the course of your department and the cashier department, if you know, is the purpose of the payout slip which is before you?

A To record the transmission of cash from a cashier to whoever is receiving the cash.

THE COURT: Who received it here?

THE WITNESS: Leon Greenberg, according to his signature.

THE COURT: You mean somebody went to the cashier's window, the person who signed for it wentto

the cashier's window, got $1200, and gave a receipt for it, is that it?

A This is in effect the hotel's receipt for the cash; not anybody would be able to get $1200. This one was approved by the general manager.

Q Mr. Roth, with respect to Government's Exhibit 5 in evidence, the ledger card entitled Sullivan County Harness Racing Association, and specifically with respect to the handwriting, for golf outings, 1970, whose handwriting is that, sir?

A That is mine.

Q When was that account opened?

A November 4, 1970.

Q What was the purpose of opening that account?

A To record the check received from Sullivan County Harness Racing Association.

Q Prior to that time did there exist such an account, if you know?

A No.

Q In the ordinary course of your business as the comptroller, do you become involved in the preparation of a ledger card for golf outings?

A No.

Q Who does, sir?

A Cashiers in the cashiers department.

Q In the course of your experience at the Grossinger Hotel have you become familiar with the method and manner in which records were made and maintained for people who played golf?

A Yes.

Q And are you familiar, sir, with the transmittal of such records for billing purposes at the hotel?

A Yes.

Q Can you explain.

A When someone wants to play golf they sign a slip with the golf secretary. That slip is either paid for in cash or it's signed for as a charge, and the charges and the cash are transmitted by the golf secretary to the front office cashiering department and recorded.

Q What type of a record is made in the front office cashiering department?

A It's posted from the charge slip onto the guest account, if it's a guest, or if there happens to be a function on for the function account, the outing account.

Q What happens in the situation where there

is to be no charge for the golf?

A On the slip there would be an identification as complimentary, on the slip that the secretary would make out.

Q By that you mean the golf secretary?

A Yes, and generally would have someone's initials next to it indicating who authorized it to be complimentary.

Q Mr. Roth, with respect to Government's Exhibits 2A through 2E, which are the original bills, 2A for July 8, 2B for July 22, 2C for August 5th 2D for August 12 and 2E for August 26, with respect to those exhibits, sir, and with respect to your conversation with Mr. Leon Greenberg concerning the billings, how did you determine what the prices for the individual items were in preparing those bills?

A By taking the prevailing prices, sales prices at that time and using those prices for computation purposes.

Q Can you explain, for example, by using Government's Exhibit 2A? Would you do so, sir?

A Explain?

Q Using Government's Exhibit 2A as an example, can you explain what the prices are for those items?

A Oh, yes. The green fees were $8 each at that time. Cart rentals were $10 each plus sales tax. The lunches were $3.50 each. Gratuities were 50 cents each. The per person cocktail party charges was $6. The grauity for the cocktail party was 15 per cent. The dinners were $12.50 each.

Q With respect to the individual charges, excluding gratuities and tax, is there a schedule of such charges kept at the Grossinger?

A Yes.

Q Is that what you used in computing this cost?

A Not cost, these are sales prices.

Q Prices.

A Yes.

MR. KINGHAM: May I have a moment, your Honor?

(Pause)

MR. KINGHAM: No further questions.

MR. FAHRINGER: Your Honor, may I have just a moment, please.

(Pause)

RECROSS EXAMINATION

BY MR. FAHRINGER:

Q Mr. Roth, when you told Mr, Kingham that you had not set up an account, what I will call an account receivable ledger for golf outings prior to this, are you absolutely certain of that, that there had never been an account set up for any of the golf outings?

A Not the ones we are referring to.

Q I mean, in 1968 or 1969, are you saying here that there was never in those years an account set up for any golf outings that were charged to Monticello Raceway?

A No, I'm not saying that.

Q Let me, if I may, please, and I ask your patience, go back to this matter of the $1200 payout slip. If I understood you yesterday, when I asked you whether there were several ways of doing that, handling gratuities, you indicated there was, right?

A Well, they're not several ways, but you'd have to be specific.

Q Let me do that, please, make it clearer.

Is it not true that if the maitre d' is going to handle the distribution of the gratuities, that can be done in cash, can it?

A It's not done. If it's done, it would have to be something that I'm not specifically aware of.

Q Well, let me ask you this --

A In other words, if Mr. Greenberg took the cash and then went to the maitre d' and asked the maitre d' to distribute it on his behalf in specific amounts, I wouldn't know that. That is possible, but I couldn't say.

Q Is one of the problems we are talking about here, Mr. Roth --

MR. KINGHAM: Objection, your Honor.

THE COURT: I will hear the rest of the question .

Q One of the problems that is involved in this area is that the payment of an employee whether it be a gratuity or whether it be his salary, there are certain reporting requirements, and withholding requirements?

A That's correct.

Q From your experience, working at Grossinger's, do you know that as far as the employees are concerned, their preference is to have it in cash?

MR. KINGHAM: Objection, your Honor.

THECOURT: Sustained.

Q Well, let me put this question to you, then:

Have there been occasions, if you know, where the maitre d' would go to the patron or the person who was having the affair, the function, and would indicate to him that the gratuities are going to be $1000, show him the gratuity slip, indicating they're going to draw that out and charge it to his account, have him sign it so that there is proper authorization and go to the cashier's cage and get the $1000 and distribute it himself?

MR. KINGHAM: Objection, your Honor.

THE COURT: Is this question -- have there been other occasions in other connections, is that what you are saying?

MR. FAHRINGER: Your Honor, I won't argue the point, but I thought that --

THE COURT: The question borders on the argumentative and that is the reason why I'm having a little difficulty with the ruling.

MR. FAHRINGER: Maybe, your Honor, I will start back.

Q Mr. Roth, you do not know of your own knowledge when you testify here today and yesterday as to who got the $1200, do you, of your own knowledge?

A Personally present at the time?

Q Right.

A No, I was not present at thetime.

Q Let me make that clear to you. In other words --

MR. KINGHAM: Objection.

MR. FAHRINGER: May I finish the question?

THE COURT: Let's not get too folksy about it. Let's leave it in the proper legal form.

MR. FAHRINGER: All right.

Q What I'm saying is, Mr. Roth, on the evening or the afternoon you weren't there when these funds were disbursed, were you?

A No.

Q What you have been testifying to here, if I understand you correctly, is what you understand to be certain procedures, right?

A There are control procedures that are used in the cashier's office.

Q You don't know whether those procedures, of your own knowledge, were employed in this case, do you?

A I was not there.

Q Now, in connection -- for instance, if I may, you testified yesterday that as far as that $75

gratuity payout, that was several months later, wasn't it?

A That is correct.

Q All right.

And in terms of that money being disbursed, apparently from the records someone was paid that $75, isn't that so?

A Correct.

Q Would you, from your experience and knowing what you know about your procedures, have reason to believe that the way that was done is somebody in the hotel went and got the $75, paid it to the people who were entitled to receive it and they simply charged it to Mr. Greenberg's account?

MR. KINGHAM: Objection, your Honor.

THE COURT: No, I will let him answer it.

A That was an unusual situation whereby information was transmitted, because Mr. Greenberg was not present in the hotel, and honoring his request, that is the manner in which it was done.

Q Unusual situations do come up in these matters, don't they?

MR. KINGHAM: Objection, your Honor.

THE COURT: You may answer.

A I would say this was an extremely unusual situation because the transaction took place five months after the function.

(Continued on next page)

Q Mr. Roth wasn't the Greenberg bar mitzvah unusual also interms of the way you normally run bar mitzvahs?

A I would say so.

Q Thank you. Now in terms of the golf situation, and the playing of golf, I take it if you are a guest in the hotel, you go to the pro shop, you sign a golf slip and it is charged to your room, is that right?

A Correct.

Q . golf fee, that is to say the cart fee, is not included in the $40 a day rate if that were the rate at that time?

A Not unless they have a package rate which includes green fees.

Q Assuming there is no package rate, if I am staying at the hotel and I am paying $40 a day, if I want to play golf and I wanted to have a cart, I sign for that and that is added to my room, right?

A Correct.

Q That is one situation. The other situation is, I presume if someone comes to the golf course and they want to go out and play golf and they are not a guest, they could pay cash to the attendant there, he would give them a cart, they would pay their green fees and they would go out and play golf.?

A Correct.

Q The category with Monticello Raceway was unusual, wasn't it, in the sense that you couldn't charge it to a room, and they weren't paying cash, were they, as far as you know?

A Yes, correct.

Q Do you know of your own kmowledge of any situations in 1970 or 1971 where a person, a guest of Mr. Grossinger's or someone else, was allowed to go out and play on the golf course and a complimentary slip was not made up?

A My own knowledge, I don't know.

MR. FAHRINGER: I have no further questions.

MR. KINGHAM: No further redirect, your Honor. Thank you.

THE COURT: Thank you. You may be excused, Mr. Roth.

(Witness excused.)

MR. KINGHAM: Government calls Eileen McCullough.

E I L E E N M c C U L L O U G H, 1955 Northwest 65th Avenue, Margate, Florida, called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. KINGHAM:

Q Is it Miss or Mrs. McCullough?

A Mrs.

Q Mrs. McCullough, what is your present employment?

A Excuse me?

Q What is your present employment?

A I am personally employed at the Monticello Raceway.

Q What is your position at the Raceway?

A Well, I am filling in for Miss Ward at the moment.

Q In what capacity?

A As secretary.

Q How long have you been working at the Monticello Raceway?

A Right at this time?

Q At this time.

A I came back in June of this year.

Q 1975?

A Right.

Q Prior to that time, prior to June of 1975, had you worked at the Raceway before?

A That is correct.

Q During what period had you worked at the Raceway?

A From 1959 through 1974, November.

Q Did you work at the Raceway 1970?

A Yes, I did.

Q What was your job?

A At that time I was personal secretary to Mr. Leon Greenberg, I was assistant office manager, I was, did all the personnel work but I was not personnel director at that time. I worked in the press box, in publicity, promotions.

Q By Mr. Leon Greenberg, do you mean this gentleman seated right here?

A That is correct.

Q I would like to show you, Mrs. McCullough, what are Government Exhibits 15A and 15B in evidence, if you would look at those, please.

And I ask you do you recognize the signature on Government Exhibit 15A?

A Yes, sir, I do.

Q Whose signature is that?

A It is Leon Greenberg's signature, but I am the one who wrote it.

Q And looking at the bottom left-hand portion of that letter --

THE COURT: Is that what you mean, it is his name but you wrote it?

THE WITNESS: Yes.

THE COURT: It is not his signature.

THE WITNESS: No, it is my signature, but his name.

Q You wrote his name on the letter, is that correct?

A That is correct, right.

Q Inthe lower left-hand corner are the initials E.M., are there not?

A That is correct.

Q Are those your initials?

A Yes, sir.

Q What does that indicate?

A It indicates that I typed this letter.

Q Beneath that, the letters ENC appear, do they not?

A Yes, they do.

Q What does that mean?

A That means "enclosure."

Q Calling your attention to Government Exhibit 15B whichis also before you, if you know, is that the enclosure that was with that letter?

A I cannot tell you definitely, but I would assume it is.

Q In the ordinary course of your business as Mr. Greenberg's secretary back in 1970, Mrs. McCullough, after

having typed and signed such a letter, what would you do with it?

A I would send it out in the mail probably.

Q Was that the regular course of business that you followed as Mr.Greenberg's secretary?

A What, to type letters and send them out? Yes.

Q And do you know at whose direction you typed that letter?

A At Mr.Greenberg's.

MR. KINGHAM: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. FAHRINGER:

Q Mrs. McCullough, while you were working there in 1970, during this period of time if Mr. Greenberg was there, that is to say, on the premises, in the administrative offices, would he normally sign the letters?

A If he was in the office, yes.

Q In other words, your procedure was if he were there, you would take the letters in to him and he would sign it, is that correct?

A He always signed his own letters when he was in the office, yes.

Q If he were not there, then I take it the

procedure was that, at least some of the letters you would sign and send them out?

A Oh,yes, it is common.

Q Would that indicate to you, then, from what you have just told us that on April 6, 1970, Mr.Greenberg was not at the monticello Raceway?

A Well, no, he probably wasn't.

Q Okay. Now, were you familiar with the procedure of horsemen signing up for outings at the Grossinger's?

MR. KINGHAM: Objection, scope.

THE COURT: Sustained. Not as to scope, but as leading on an independent area.

Q Did you know -- well, what was the procedure for the organizing of golf outings back in 1970?

MR. KINGHAM: Objection.

THE COURT: Sustained. Was there any procedure that you knew of?

THE WITNESS: Yes.

Q Will you tell us about them?

A Well, the switchboard operator would make an announcement that on a particular day there would be an outing, and there was on the horsemen's board in the racing office a sheet which they used to sign. This sheet would then be delivered over to the main office, usually dropped

at the switchboard, and from there it would go to publicity, promotions, to Allen Finkelson or Loretta Kratz, and they in turn would notify whatever place the outing was taking place, how many would be there to attend.

Q I show you what has been marked as Defendant's Exhibit ¢ for identification, and I ask you if you recognize that.

A Yes, I do.

Q What is it?

A It is a typical sheet of horsemen signing up for an outing, golf outing.

MR. FARHINGER: I will offer this in evidence, your Honor.

MR KINGHAM: May I see it, please, your Honor.

(Pause.)

MR. KINGHAM: Voir dire, your Honor.

THE COURT: Yes, sure.

VOIR DIRE EXAMINATION

BY MR. KINGHAM:

Q Now, Mrs. McCullough, you say this is a typical sheet for horsemen signing for golf outings, is that correct?

A Yes, sir.

Q The writing here, you don't know whose writing that is, do you?

A Right off? No.

Q And this sheet is not a sheet for Grossinger's, is it?

A No, sir.

Q And attached to this sheet is a voucher for a check, is it not?

A Yes, sir.

Q And that voucher indicates that a payment was made by the track to somebody, isn't that correct?

Yes, sir.

Q And you are familiar with that procedure, I take it, is that correct?

A Yes, sir.

Q Now, you don't know of your own knowledge, Mrs. McCullough, when this sheet was prepared, do you?

A When?

Q When it was prepared, of your own knowledge, this particular piece of paper?

A Oh, this particular one?

Q Right. You don't know when that was prepared, do you?

A No, but the only thing I can tell you --

MR. KINGHAM: Please, your Honor, could the witness be directed just to answer the question?

THE COURT: Yes.

Q You don't know of your own knowledge when this particular piece of paper was prepared, do you?

A Just --

Q You didn't see it prepared?

A No, sir, I did not.

Q In fact, the first time you physically saw this sheet was when Mr. Fahringer was preparing you as a witness for this trial, isn't that correct?

A No, sir.

Q Have you ever seen this sheet before?

A This sheet --

Q This very piece of paper, have you ever seen that before?

A No, sir. Not this -- no, I haven't.

Q Before this very minute or the few minutes ago Mr.Fahringer showed it to you, you have never seen it before, is that your testimony?

A That is my testimony.

MR. KINGHAM: I object, your Honor. Lack of foundation.

THE COURT: Pass it up.

It may remain marked for identification on this branch of the case.

MR. FAHRINGER: May I ask some more questions on that, your Honor, without referring to the exhibit? May I, your Honor?

THE COURT: Yes.

BY MR. FAHRINGER:

Q Mrs. McCullough, Mr. Kingham asked you about the blue sheet of paper that was on the top here. Can you at least tell us what that is?

A Oh, that shows that a check had been issued on August 10, 1970.

Q And that is a Monticello Raceway check?

A That is correct.

Q Is there a procedure within the operation of the Raceway that you are familiar with that when a bill is paid, such a blue sheet is attached to the invoice?

A That is correct.

Q Without referring to that exhibit -- did you wnt to say something else?

A No.

Q Without referring to that exhibit, were you familiar with the procedure of taking these sheets for Grossinger's, the ones that you have told us about for Grossinger's, and --

THE COURT: Has she told us anything about

Crossinger's?

MR. KINGHAM: Objection, your Honor.

MR. FAHRINGER: I am sorry, I thought she had.

THE COURT: I didn't think so.

MR. FAHRINGER: I will ask.

Q Do you know whether sheets like that were prepared for the outings that took place at Grossinger's in 1970?

MR. KINGHAM: Objection.

THE COURT: Sustained.

Q Well, in 1970, do you know whether or not every time there was a golf outing an attendance sheet was prepared?

MR. KINGHAM: Same objection.

THE COURT: I am going to sustain this line of inquiry on this branch of the case.

MR. FAHRINGER: All right, your Honor.

May I, your Honor, write out something?

THE COURT: It goes beyond the direct examination, into areas that are not within the scope of the direct examination.

MR. FAHRINGER: May I reserve my right to call the witness in my case, then?

THE COURT: Nobody can prevent you from calling

anybody you want.

MR. FAHRINGER: Your Honor, then I have no further questions of the witness.

MR. KINGHAM: I have no redirect, your Honor.

THE COURT: Thank you very much, Mrs. McCullough. You may step down.

(Witness excused.)

MR. KINGHAM: Government calls Paul Grossinger.

P A U L G R O S S I N G E R, Grossinger, New York, 12723, called as a witness by the Government, being first duly sworn, was examined and testified as follows:

MR. KINGHAM: May I inquire, your Honor.

DIRECT EXAMINATION

BY MR. KINGHAM:

Q Mr.Grossinger, are you the president of S & H Grossinger, Inc.?

A I am.

Q How long have you been associated with that corporation and the Grossinger Hotel?

A All my life.

Q How long have you been president?

A Since the death of my father in 1950. Pardon me.

Q I am sorry.

A About ten years ago.

Q Who, Mr. Grossinger, owns that corporation and the Grossinger Hotel?

A My sister and myself.

Q What is your sister's name, sir?

A Elaine Etess.

Q Mr. Grossinger, are you testifying today pursuant to a grant of immunity?

A I am.

Q What do you understand the terms of that immunity to be?

MR. FAHRINGER: Objection, if it please your Honor.

THE COURT: Overruled.

A I am free of any prosecution in this particular matter with the exception of the commission of perjury upon my part.

Q Do you know the defendant, Leon Greenberg, who is seated here, sir?

A Yes, sir.

Q How long would you say you have known Mr. Greenberg?

A At least 25 years.

Q Did you know him back in 1970 and 1971?

A Yes, sir.

Q What position did he hold then?

A He was president and general manager of the Monticello Raceway.

Q Did you, yourself, Mr. Grossinger, hold any position at Monticello Raceway?

A Yes, sir, I was an officer and a director.

Q What was your position as an officer?

A I was a vice-president.

Q How long have you held those positions?

A Since the inceptio of the track.

Q Were you one of the fonnders of the Raceway?

A Yes, sir.

Q Mr.Grossinger, during the spring of 1970 did you have occasion to speak with Leon Greenberg about a bar mitzvah?

A Yes, sir.

Q Do you recall when it was that that took place?

A Well, I believe it was some time in the spring of 1970. It was after the directors meeting at which I learned that Mr.Greenberg's son was oing to be bar mitzvahed and after the meeting I approached Mr.Greenberg and I said, if I could be of any service to him in the matter of the bar mitzvah, I would be happy to do so.

Mr.Greenberg told me that he was going to hold the bar mitzvah at the Concord Hotel because he didn't want to offen any of the other members of the board who were directors and hotel owners and I told him that I didn't think that any of us would take offense if he held the affair at any one of our particular hotels.

I What did Mr. Greenberg say?

A As far as I know that was the end of the conversation at that time.

Q During the summer did you have a conversation with Mr. Greenberg about the bar mitzvah?

A Yes, sir. I received a call from Mr.Greenberg telling me that his wife wanted to hold the bar mitzvah at Grossinger's. We made arrangements for a meeting and we proceeded to set up the date and the mechanics of the bar mitzvah.

Q After your conversation in the summer, did you have a conversation with Mr.Greenberg concerning the billing for the bar mitzvah?

A Some time later in September or early October I received a call from Mr.Greenberg telling me that he wanted the bar mitzvah billed in a certain manner and that he had approval of this, so I says let me turn you over to Mr. Roth, my controller, and he will work it out with you.

Q Could you tell me what manner he wanted the bills?

A No, sir.

Q Did you at that time, sir, did you know where the bills were to go?

A No, sir.

Q How long did your conversation with Mr. Greenberg take on that occasion?

A Oh, I would say no more than a minute.

Q What did you do after you spoke to Mr. Greenberg?

A I got in touchwith Mr. Roth and put him in contact with Mr.Greenberg and left the matter in their hands.

Q Let me show you, Mr. Grossinger, what are Government Exhibits 2A through 2G in evidence in this case. I ask you, sir, if you recall having seen those.

A I don't think I saw these particular ones, but I saw some prior to these whereby the bills were made up and they didn't reflect the discount and I told Mr. Roth to show a 25 per cent discount was given to the track.

Q Did the information reflected on the bills you saw, was that information true, sir?

MR.FAHRINGER: I will object to that, if it please your Honor.

THE COURT: Rephrase the question.

Q Do you recall what type of information, Mr. Grossinger, was on the bills that you saw?

A Similar to these. They showed bills for outings and functions held at the hotel.

Q To our knowledge at that time had the outings and functions reflected on the bills taken place?

A I know there was at least one outing that had taken place. The others I had no knowledge of.

Q On November 7, 1970, Mr. Grossinger, did a bar mitzvah and reception for Andrew Greenberg take place at your hotel?

A Yes, sir.

Q At around the time of the bar mitzvah, did you have a conversation with Mr. Roth concerning the billing

for the bar mitzvah?

A In the natural course of procedure, either with Mr. Roth or with our convention department, I told them that the billing was to go out at cost. The cost was to be presented to me and I would make a final determination.

Q Showing you, Mr.Grossinger, what is Government Exhibit 12 in evidence.

A Yes, sir.

Q I ask you to look at Government Exhibit 12 and tell me if you recall having seen that?

A Yes, sir.

Q What is that?

A That is the cost of the Greenberg bar mitzvah to the Grossinger Hotel.

Q Do you recall having discussed that with Mr. Roth?

A Well,Mr. Roth gave me this and I told him it was all right.

Q Do you remember when it was that he gave that to you?

A I believe it was some time in February of 1975.

Q Of what year, sir?

A '71, please.

Q Now, with respect to the cost figures reflected

on Government Exhibit 12, Mr.Grossinger, do you know from your experience as a hotel man what the retail cost of that bar mitzvah would have been?

MR. FAHRINGER: I will object to that, if it please your Honor.

THE COURT: Overruled.

A I would say between 15 and $20 per person without gratuities for the dinner. Then the reception would probably have been around five to $7.50 plus the gratuities and liquor would be additional.

Q Liquor would be additional, sir?

Yes.

Q Based upon the cost figure, that is the total on that summary, which is before you, that is looking at Government Exhibit 12 with the total cost figure, do you know what the approximate retail value would be?

A I would say it would come between twelve and $15,000.

Q I show you, Mr.Grossinger, Government Exhibit 15A and 15B.

A Yes, sir.

Q Have you seen those before?

A Yes.

Q When was that?

A At the time the receipt of this upon my desk about April 7 or 8.

Q What did you do after you received Government Exhibits 15A and 15B?

A I called Mr. Roth in. I asked to see the account I saw the account was made out to Mr. Greenberg and I instructed him to take the cost of the outings of the previous exhibits off this bill and bill him for the balance.

Q Will who, sir?

A Mr.Greenberg.

Q What was your purpose in doing that?

MR. FAHRINGER: I will object to that, if it please your Honor.

THE COURT: Suppose you approach it in another way. I am not ruling out the line, I am merely dealing with the question.

Q During your conversations with Mr. Greenberg, had you received any instructions in that regard, sir?

A Well, it was my understanding that Mr. Greenberg had a proposal from the track --

MR. FAHRINGER: I am sorry, your Honor, may I object to this as to what his understanding was.

THE COURT: Is this an understanding that you had from Mr. Greenberg?

THE WITNESS: No, it was a conclusion I drew myself, sir.

THE COURT: All right. Proceed by other questions.

Q From what did you draw that conclusion, Mr. Grossinger?

A From my initial conversation where he told me that he had approval.

Q What did Mr. Greenberg tell you about approval?

A He said, I have approval for this and I want it want it billed in a certain manner and I put him together with Mr. Roth.

Q What did you understand him to mean by "approval"?

MR. FAHRINGER: I will object, if it please

your Honor, to that. I think he can tell us what he said.

THE COURT: Was there anything else said to give any indication as to what you and he were talking about?

THE WITNESS: No, sir.

THE COURT: You referred to approval ofthis. What is the "this" that you are talking about?

THE WITNESS: The approval of the track picking up that much of the cost of the bar mitzvah, sir.

THE COURT: Go ahead.

MR. KINGHAM: May I proceed, your Honor?

THE COURT: Yes.

Q Mr. Grossinger, calling your attention to July of 1971, did you have occasion to speak with Mr. Greenberg in July of 1971?

A In reference to what, sir?

Q In reference to the matters that are in Government's Exhibit 15.

A Not that I recall, sir.

Q Let me show you, if I may, sir, Government's Exhibit 19 in evidence and before I ask you about that --

A Pardon me, did you say 1970 or 1971?

Q I said 1971, Mr. Grossinger. Let me withdraw the question, if I may and put another question.

A All right.

Q Following your conversation with Mr. Roth concerning the letter and bill in Government's Exhibit 15, did you thereafter at about that time have a conversation with Mr. Greenberg?

A Will you repeat the question, please, sir.

Q After you spoke with Mr. Roth about the letter and the bill, which are Government's Exhibit 15 to your left, after you spoke with him about that and about the payment, did you then have a conversation with Mr. Leon Greenberg?

A Yes, I spoke with Mr. Greenberg and I told him that the balance remaining on the account was $987.09.

Q Calling your attention to July of 1971, did you have a conversation with Mr. Greenberg then?

A Yes, the bill hadn't been paid. I called him and asked him if there was anything wrong with the bill. He said, no, he would send a check and a check was forthcoming.

Q Mr. Grossinger, let me show you Government's Exhibit 22 in evidence. Let me show you Government's

Exhibit 23 for identification.

A Yes, sir.

Q What is Government's Exhibit 23 for identification without stating what the contents are, what physically is that?

A It is a letter addressed to the Sullivan County Harness Racing Association signed by me.

Q When did you prepare and sign that letter?

A On the 17th of April 1974.

Q Mr. Grossinger, calling your attention to April of 1974, and calling your attention to Government's Exhibit 22 in evidence, which is the check before you, whose signatures are on that check?

A My signature and the signature of my sister, Mrs. Elaine Etess.

Q After you signed that check, what did you do with it?

A We had it certified and we sent it back to the raceway.

Q After you signed the letter that you have identified as Government's Exhibit 23 for identification, after you had signed that, sir, what did you do with that?

A We mailed it registered mail to the association.

Q What do you mean by the association, sir?

A The Sullivan County Harness Racing Association.

Q Is that Monticello Raceway?

A Yes, sir.

Q Were any copies of that letter prepared and mailed?

A Yes, a copy of this was sent to all officers and directors of the track.

MR. KINGHAM: Your Honor, Government's Exhibit 23 for identification is offered as Government's Exhibit 23 in evidence.

MR. FAHRINGER: Objected to, your Honor.

THE COURT: The objection is sustained except to the extent that there may be indicated for the evidence that a covering letter accompanied the certified check for $4856.16, which is in evidence as Government's Exhibit 22.

MR. KINGHAM: Is your statement then for the record, your Honor?

THE COURT: It is to that extent that I am allowing the information to appear before the jury. I take it you have no objection to that.

MR. FAHRINGER: I do not, your Honor.

THE COURT: Read that back to the jury so

that they won't think I was just talking to myself.

(Record read)

Q Mr. Grossinger, with respect to Government's Exhibit 23 for identification --

MR. KINGHAM: If I may continue on a foundation basis, your Honor.

THE COURT: Go ahead.

Q With respect to Government's Exhibit 23 for identification, was a copy of that letter sent to Mr. Greenberg personally?

A It would have to have been because --

Q Let me refresh your recollection.

A It would have to have been because he was a director -- an officer and director of the track and it so indicates here in the letter.

Q After you mailed the cover letter and the check to the track and to Mr. Greenberg, did you thereafter receive any communication from Mr. Greenberg about that matter?

A Not that I can recall.

MR. KINGHAM: Your Honor, Government's Exhibit 23 for identification offered again.

MR. FAHRINGER: Same objection, your Honor.

THE COURT: I will allow the last two

paragraphs of the letter, the salutation, the signature, the addressees and the enclosure in evidence and the exhibit may be redacted accordingly.

MR. KINGHAM: Your Honor, may I read then, from the portions which the Court has allowed in?

THE COURT: Yes.

MR. KINGHAM: I take it it is the first paragraph that is stricken?

THE COURT: Yes, I will just give you a redacted copy. Give me the scissors.

(Government's Exhibit 23 was received in evidence)

THE COURT: This redacted copy may now be marked in evidence by the clerk and you may read it to the jury.

MR. KINGHAM: Thank you, your Honor.

(Mr. Kingham read from Government's Exhibit 23 in evidence to the jury)

Q Mr. Grossinger, at the time that you mailed this letter and the check to the raceway, did you do anything else?

A Yes, sir. I sent a letter to the track resigning my positions as vice president and director.

Q Mr. Grossinger, before I close, do you

normally wear a hearing aid, sir, as you are wearing today?

A Not all the time.

Q But you do have one on today, is that right?

A Yes, sir.

MR. KINGHAM: Thank you. No further questions, your Honor.

THE COURT: We will take a short recess.

(Recess)

(Jury present)

CROSS-EXAMINATION

BY MR. FAHRINGER:

Q Mr. Grossinger, you indicated you knew Mr. Greenberg for approximately 25 years?

A Yes, sir.

Q Can you hear me all right?

A Yes, sir.

Q Did you know him when he was an assistant district attorney?

A Yes, sir.

Q And I take it you knew him when he first went with the track, then, first as a lawyer and then as personnel director?

A Yes, sir.

Q Do you know that Mr. Greenberg used to work seven days a week at the track?

A Yes, sir.

Q 12, 14 hours a day?

A Yes, sir.

Q And were you one of the persons who participated at least with the board of directors in the decision that he should become president?

A Yes, sir.

Q Was that because of the efforts that he devoted on behalf of the track?

A Yes, sir.

Q Have you worked with Mr. Greenberg in a number of charitable projects in the area of Monticello and around?

A Yes, sir.

Q Now, in terms of the bar mitzvah, if I recall your direct testimony, you indicated that at one of the board meetings, after one of the board of directors meetings, you knew or you had heard that Mr. Greenberg was going to have a bar mitzvah?

A Yes, sir.

Q And he had mentioned to you that he was going to, or at least he was planning on having it at the Concord?

A Well, I had gone up to him, and told him, I offered our services, and he told me he was going to have it at the Concord.

Q October. And after that, apparently you -- were you interested in having it at Grossinger's?

A Well, I was very pleased when they chose to have it at Grossinger's.

Q Let me ask you this: Back in 1970, when you

were speaking to him about this, did you indicate to him that you thought your place, Grossinger's, could do a real nice job for him?

A I always take that for granted, sir.

Q Do you recall at that time speaking to him at all as to what arrangements would be made if he had it at your place?

A Yes, I indicated that I would give it to him at my cost.

Q This conversation took place, I guess some five years ago now. Do you recall every single word that was said between the two of you?

A No, sir.

Q You are trying to give us your best recollection of what you recall your offer to him was?

A Yes, sir.

Q Did you indicate to him that you would make the facilities of the hotel available to him?

A Yes, sir.

Q He at that point indicated that he would have to think about it, didn't he?

A Well, it's my recollection that he said he was going to hold it at the Concord because he didn't want to offend any of the hotel men on the board of

directors. There were about five of us.

Q Okay.

At some later date I take it you talked again about the bar mitzvah?

A Well, I received a call from him, and he told me his wife desired to have it at Grossinger's and I was very, very pleased.

Q All right.

Do you recall sometime after that, Mr. Grossinger, that Leon Greenberg indicated to you that you should send some bills out for the outings that the horsemen had been having up at your hotel?

A Sorry, sir, I don't recall anything like that.

Q You are not saying it didn't happen. You just don't recall?

A I'm just saying I don't recall.

Q Incidentally, do you recall him at that same time saying that he was authorized to pay for those outings that were had at your hotel; do you recall any conversation of that type?

A I don't recall any conversation along this matter at all.

Q But you are not saying it didn't take place,

are you?

A I'm not saying it didn't take place.

Q In any event, there came a time, as you have indicated, that a date was fixed for the bar mitzvah at your place, right?

A Yes, sir.

Q There are two ways of running bar mitzvahs, isn't there; one is a flat rate per person charge and the other way is where you charge them for the full supplies that are used, like liquor and food and things of that sort?

A The general habit at Grossinger's is to charge a flat price for the dinner, a flat price for the reception, plus the liquor charges, plus the gratuities.

Q All right. May I ask you this: Have you ever had bar mitzvahs there where you charge a flat rate per person that covers everything, that is to say, it would cover the liquor, it would cover the gratuities, and it would cover any other incidental expenses?

A On occasion -- no. On occasion we have been told by a person how much he wants to spend, and we would create a function that would stay within that bounds.

Q May I ask you this: When you mentioned about a flat rate for the meal, what would that include ordinarily, a flat rate for the meal?

A Well, it would include the menu of the dinner.

Q Anything else in addition to that at all?

A No, sir.

Q That would also include the labor, wouldn't it?

A Yes, sir.

Q In other words, if you gave a person a flat rate, you mentioned a figure of $15 per person, that rate would include, of course, the --

A It would include all the labor except the gratuity.

Q Okay, all right. Now, when you have a special function, like a bar mitzvah or a wedding, do you know whether or not there is for waiters or waitresses and busboys in the union contract what they call a banquet rate or a function rate of $35 per person?

A Yes, sir.

Q That person, that is to say that waitress who works that affair, she gets or he gets $35 for the three hours or whatever time he or she puts in, is that right?

A Yes,sir.

Q Isn't it true that in that situation ordinarily that person would not receive a gratuity on top of that?

A Yes, sir. Not necessarily. Sometimes, on occasion, somebody will give an additional gratuity, but normally it is all-inclusive.

Q So in other words the $35 would ordinarily be all the person would get?

A Yes, sir.

Q Now, if I follow you correctly, then, Mr. Grossinger, if you were charging $15 a person, that would then -- and it was a function rate, a bar mitzvah -- then that would inclue all the labor and all the food for that affair, right?

A Yes, sir. No. For the dinner.

Q The dinner, I mean, that's right. Would that include any hors d'oeuvres before dinner?

A No, sir.

Q That would be additional, okay.

Now, if you were doing it at cost, on a flat rate, and let's take your figure of $15 per person, would costs be about one-third of that?

A Well, when I get a cost of anything, what I get is, the kitchen steward works up all the items that he has used, he costs them out, they are then given -- then they are presented to me through Mr. Roth or a proper deputy.

Q Do you know, in your hotel, when you are working on a retail rate what percentage of the retail price is cost, is it one-third, one-half,or what percentage?

A I have never - - we never determined price that way.

Q All right. Mr.Grossinger. in 1970 and 1971,

during this period of time that you have talked about and have been examined by Mr. Kingham, did you at any time during those two years agree with anyone to defraud the Racetrack out of any moneys?

A Not that I did knowingly.

Q As a matter of fact, after 1971, this matter was never brought up again until 1974, when you received a call from a Mr. Levine, isn't that true?

A I received a call from Mr. Levine who is my general counsel.

Q A lawyer?

A Yes,sir. And he told me he wanted to see me.

MR.KINGHAM: Objection, your Honor.

THE COURT: Just a moment. That is as far as you need go.

THE WITNESS: All right, thank you.

Q Didn't he have you come down to his office?

A Yes,sir.

Q And at that time -- incidentally, do you know of your own knowledge that Mr. Levine, Lazarus Levine, does not like Leon Greenberg?

MR. KINGHAM: Objection, your Honor.

THE COURT: Sustained.

Q On that occasion, after you met with Mr. Levine,

was he the one that dictated that letter that was read in evidence here as Government Exhibit 23?

A Yes,sir.

Q Is he the one who told you to resign from the Raceway?

A Yes, sir.

Q And is he the one who told you to send the money back to the Track?

A He advised me of this.

Q Up until that time had you at any time felt you had done anything wrong?

A No,sir.

Q It was on his instructions that you resigned, you sent the letter in, and that you returned the money?

A Under advice --

MR. KINGHAM: Objection, your Honor.

THE COURT: Yes, the word "instructed" is improper You may recast the question.

Q Was it on his advice that you did all the things that I have related to you, that is, send in a letter of resignation, return the money and resign from the Racetrack?

A Yes,sir.

Q In the years that you have known and worked

with Mr.Greenberg at the Racetrack -- and you were a director all through the period of time that you were associated with the Race track, isn't that true?

A Yes,sir.

Q You also, as Mr. Kingham brought out, you occupied an office, you were vice-president?

A Yes, sir.

Q Did you draw a salary?

A Yes, sir.

Q During that entire time, did you ever have any reason to question Mr.Greenberg's loyalty to the Racetrack?

A No, sir.

Q Did you ever have any reason to question his honesty?

A No, sir.

MR. FAHRINGER: Thank you. I have no further questions.

THE COURT: Redirect?

MR. KINGHAM: May I have a moment, your Honor?

THE COURT: Yes.

(Pause.)

REDIRECT EXAMINATION

BY MR. KINGHAM:

Q Just one question. Mr.Grossinger, during your

conversations with Mr.Greenberg concerning the bar mitzvah, did you at any time agree that you would pay for the food and that he was to pay for everything else?

A Would yourepeat the question, please?

THE COURT: The reporter wll read it.

(Question read.)

A No, sir.

MR. KINGHAM: No further questions, your Honor.

Thank you.

RECROSS-EXAMINATION

BY MR. FAHRINGER:

Q Mr.Grossinger, you were a good friend of Mr. Greenberg, isn't that true?

A Yes,sir.

Q Isn't it also true that you would, if you could, do favors for him?

A Yes, sir.

Q Going back to 1970, do you recall everything, every single word that was said between the two of you about this bar mitzvah?

MR. KINGHAM: Objection, asked and answered.

THE COURT: We have had that. Let's confine ourselves now to the redirect.

Q Is it possible that there could have been some talk between the two of you about your supplying the food?

MR. KINGHAM: Objection, your Honor.

THE COURT: Sustained.

MR. FAHRINGER: I have no further questions, your Honor.

MR. KINGHAM: Nothing further,your Honor. Thank you.

THE COURT: You may be excused.

THE WITNESS: Thank you.

(Witness excused.)

MR. KINGHAM: The Government calls Robert Schoonmaker.

R O B E R T S C H O O N M A K E R, called as a witness by the Government, R.R. 3, Box 252C, Monticello, New York, being first duly sworn, was examined and testified as follows:

MR. KINGHAM: May I inquire, your Honor?

THE COURT: Yes.

MR. KINGHAM: Thank you.

DIRECT EXAMINATION

BY MR. KINGHAM:

Q Mr.Schoonmaker, what is your job at the present time, sir?

A At the present time I am the assistant general manager and comptroller of Monticello Raceway.

Q As the comptroller of Monticello Raceway, are you generally responsible for the financial operation of the Raceway?

A Yes.

Q How long have you been in that position?

A Since April 1960.

Q Do you know the defendant, Leon Greenberg, who is seated right here?

A Yes,sir.

Q How long have you known Mr. Greenberg?

A Since the early part of 1960.

Q In the course of your duties as comptroller, by the way, were you comptroller as well during 1970 and 1971?

A Yes,sir.

Q In the course of your duties as comptroller, have you become familiar with the method and manner in which bills are received and paid by the Monticello Raceway?

A Yes.

Q Is that done in your office?

A Yes.

Q Do you have employees who work for you?

A Yes.

Q How many employees do you have, sir?

A Three.

Q Was that true around 1970 as well?

A I don't remember.

Q I am going to show you, Mr.Schoonmaker, what are Government Exhibits 2A through G in evidence. Would you look at those, please, and tell me if you have seen those before?

A Yes.

Q Do you recall having seen any of those in 1970?

THE COURT: Did you see them in 1970?

THE WITNESS: I couldn't tell you if I saw them in 1970. That is five years ago.

Q Calling your attention to Government Exhibit 2G, which is on your far right, the stamped impression that appears on the bottom, what does that indicate, sir?

A Well, it indicates the account number, the page number and who it is approved by.

Q What does that mean in terms of your office procedures?

A Well, it means what account it is to be charged to and what page it is on the cash disbursements ledger.

Q The cash disbursements ledger is a book that is kept in the regular course of the business of Monticello Raceway, is that right?

A Yes.

Q Does that stamp indicate that that document was in your office at one time?

A Yes.

Q Now, in the normal course of business of Monticello Raceway, has the Monticello Raceway done business with Grossingers or the Grossinger hotel?

A Some, yes.

Q In the regular course of that business how are bills received and paid?

A In the normal course of business all bills, I won't say all bills, but bills are received in the mail as well as hand-delivered by vendors.

Q Can you give an example of the type of bill that is hand-delivered by a vendor?

A Well, we have numerous people that bring their bills in and leave them at the offices.

Q Can you give an example of what type of a person that is?

A Well, we have one particular who is like Fallsburg Lumber Company, he brings his bill in every once in a while when he needs money.

Q Does he deliver materials to the Raceway?

A Yes.

Q In the regular course of your business in dealing with Grossinger's Hotel, how are bills from Grossinger's received and paid?

A Some bills from Grossinger's are hand-delivered and some bills are in the mail.

Q How -ong have you been friendly with Leon Greenberg, Mr.Schoonmaker?

A Since -- how long have I been what?

Q Friendly with Mr. Leon Greenberg?

A Since 1960.

Q Have you been business associates at any time in addition to your job as comptroller at the Raceway?

MR. FAHRINGER: I will object to this, if it please your Honor.

THE COURT: Overruled. What is the answer?

A No.

MR. KINGHAM: May I have a moment, your Honor.

Q Mr.Schoonmaker, I show you Government Exhibit 27 for identification and I ask you to look at that, specifically pages 10 and 11, if you would look at those and tell me if that refreshes your recollection as to how bills were received and paid from Grossinger's.

A Yes. What is the question.

Q What was the regular course of business in the dealings between the Raceway and Grossinger's with respect to the receipt of bills?

A You asked me a question --

THE COURT: Just answer this one.

THE WITNESS: What is the question?

THE COURT: What is the regular course of business in connection with the receipt of bills from Grossinger's?

THE WITNESS: Judge, there is two different types of bills that come from Grossinger's. Some from the hotel and some from the golf pro.

THE COURT: How are the hotel bills received?

THE WITNESS: The hotel bills are generally through the mail.

The golf pro bills are generally delivered by whoever they are given to after a golf outing.

THE COURT: What do you mean by "whoever they are given to"?

THE WITNESS: Normally somebody is in charge of the golf outing at the hotel and the golf pro, after the outing is held, will give the bill to whoever is in charge of the outing and he will bring it back to the Racetrack himself.

THE COURT: In other words, the golf pro makes out a bill?

THE WITNESS: Yes, sir.

THE COURT: He gives that bill to a person and that person brings it to your office?

THE WITNESS: Yes, sir.

MR. KINGHAM: May I, your Honor?

THE COURT: Yes.

Q Do you recall testifying before a Federal

grand jury in this courthouse on May 13, 1975, Mr. Schoonmaker?

MR. FAHRINGER: I will object to this, if it please your Honor.

THE COURT: Overruled.

Q Do you recall testifying, sir?

A Yes.

Q Do you recall having been asked these questions and having given these answers.

MR. FAHRINGER: Same objection, your Honor.

THE COURT: Overruled.

"Q By the way, Mr. Schoonmaker, when bills like this, and I will use as an example the bill attached to a check dated July 20, 1970, which is #2030, the check in the amount of $123, a bill dated June 29, 1970, from the Grossinger's addressed to Monticello Raceway, reflecting apparently charges on 6/24 in the amount of $123 for golf balls and cart rentals and attached to that is what appears to be a hotel charge card from Grossinger's reflecting that charge, when bills like this come in, do they come in through the mails, sir, or are they hand-carried by couriers or how do these bills come in to the Raceway?

"A Through the mail."

Do you recall having been asked that question

and having given that answer?

A Could you read that again, please.

THE COURT: What do you want to have read again, the answer or the question?

THE WITNESS: The question. Was there golf balls on that also?

MR. KINGHAM: May I reread the question, your Honor?

THE COURT: All right.

Q Do you recall having been asked this question and having given this answer:

"Q By the way, Mr. Schoonmaker, when bills like this, and I will use as an example the bill attached to a check dated July 20, 1970, which is #2030, the check in the amount of $123, a bill dated June 29, 1970, from the Grossinger's addressed to Monticello Raceway, reflecting apparently charges on 6/24 in the amount of $123 for golf balls and cart rentals and attached to that is what appears to be a hotel charge card from the Grossinger's reflecting that charge, when bills like this come in, do they come in through the mails, sir, or are they hand-carried by courtiers or how do these bills come in to the Raceway?

"A Through the mail."

Do you recall having been asked that question

and having given that answer?

A Yes.

Q Do you recall having been asked this question --

THE COURT: Was the answer true?

THE WITNESS: That bill particularly, yes, sir. If it came from the hotel --

THE COURT: Was your answer true?

THE WITNESS: Yes.

Q Do you recall having been asked this question; and having given this answer.

"They come in to Grossinger's through the mails, you have seen that through the years, isn't that the way they come in, sir, isn't that correct?

"A Yes."

Do you recall having given that answer to that question?

A Yes.

Q Was that answer true?

A Yes.

Q Mr.Schoonmaker, let me show you what is Government Exhibit 3 in evidence. Will you look at that, please?

o Yes.

Q Do you recognize the signatures on that check?

A Yes.

Q Whose signatures are those?

A Leon Greenberg and Sidney Sussman.

Q Showing you Government Exhibit 25 for identification --

MR. KINGHAM: Which I will offer in evidence, your Honor, as Government Exhibit 25.

MR. FAHRINGER: No objection, your Honor.

THE COURT: Received without objection.

(Government Exhibit 25 was received in evidence.)

Q Showing you Government Exhibit 25, Mr. Schoonmaker --

A That is a voucher.

Q What do you mean by a voucher? Can you explain what that means in relation to the check?

A Well, actually it is a duplicate copy of the check which is attached to the bill as the voucher itself.

Q That duplicate copy is then kept in the Raceway's files, is that correct?

A Yes.

Q In your office, is that correct, sir?

A Yes,sir.

Q Now, on Government Exhibit 25 appears a stamp,

does it not, that says "Okay auditing committee."

A Yes.

Q What is the auditing committee?

A Well, it is a committee of the directors who audit all the bills.

Q Do you know who was on the auditing committee in 1970?

A Yes.

Q Who was that, sir?

A Mr. Sussman, Mr. Kutsher and Mr. Hammond.

Q Who is Mr. Hammond?

A Mr. Hammond was the corporation treasurer.

Q At that time, is that right?

A At that time, yes.

Q Does the auditing committee see the bills before they are paid or after they are paid?

A Generally after.

Q Mr. Schoonmaker, is Monticello Raceway and the Sullivan County Harness Racing Association a public or private corporation?

A Public.

Q What does that mean?

A It means that various people hold stock, it is a stock corporation owned by various people.

Q Do you know how many stockholders approximately there were in 1970?

A I said approximately 5000.

Q I want to show you, Mr. Schoonmaker, Government's Exhibit 22 and 23 in evidence and if you would look at those, sir.

Government's Exhibit 23 is a copy, is it not, and something has been cut out of it?

A Yes, it appears to be. Yes.

Q Do you recall having seen the original of Government's Exhibit 23 at any time?

THE COURT: You may show him the original exhibit 23 for identification for this purpose.

MR. KINGHAM: Thank you.

THE COURT: I will ask you, Mr. Witness, not to refer in your answers to Government Exhibit 23 for identification, but only refer to 23 in evidence, that is the one with the cutout. This one is being shown to you only to assist you on the question that was asked.

THE WITNESS: Yes.

A The answer to this question is yes, I have seen this.

Q You have seen Government's Exhibit 23 for identification, part of which is in the copy that is 23 in evidence, is that right?

A Yes.

Q 22, the check, have you seen that before?

A Yes.

Q When was the first time that you saw those documents?

A Sometime in April 1974.

Q Did they come into your possession?

A Yes.

Q What did you do with them?

A When I received them I gave them to Mr. Greenberg.

Q At the time you gave them to Mr. Greenberg

did you have any conversation with Mr. Greenberg?

A No.

MR. FAHRINGER: I will object, if it please your Honor.

THE COURT: I think the question is allowable and the witness has answered in the negative. Is that right?

THE WITNESS: Yes.

Q After you gave it to Mr. Greenberg, did you see it at any time thereafter?

A Yes.

Q When was that, sir?

A A few days after I gave it to him.

Q What were the circumstances under which you saw it a few days later?

A He gave it back to me and told me to keep it.

Q What did you do with it?

A I put it in the safe.

Q How long did it remain in the safe?

A Until I brought it down to you.

Q Do you recall when that was, sir?

A I think in May.

Q Of what year?

A '75.

Q Was that when you came to the grand jury?

A I believe so, yes.

Q Showing you, Mr. Schoonmaker, Government's Exhibit 26 for identification. Would you look at that, sir, and tell me if you recognize that.

A Yes.

Q What is that?

A That is an envelope, Sullivan County Harness Racing Association envelope marked in pencil on it "Paul Grossinger."

Q Whose writing is that?

A That is my writing.

Q When was the first time that y saw that envelope or placed that writing there?

A The date that these were returned to me.

Q FRom whom, sir?

A Mr. Greenberg.

Q What was that envelope used for?

A Just to put it in the safe and for identification purposes.

MR. KINGHAM: Your Honor, the Government's Exhibit 26 for identification is offered as 26 in evidence.

MR. FAHRINGER: My only objection is

relevancy, your Honor.

THE COURT: Overruled.

(Government's Exhibit 26 was received in evidence)

MR. KINGHAM: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. FAHRINGER:

Q Mr. Schoonmaker, concerning this last line of inquiry, you know, don't you, that copies were made of that letter by the Monticello Raceway, don't you? I am referring now to I guess Government's Exhibit 23 for identification?

MR. KINGHAM: Objection, your Honor, to the first part of the question.

THE COURT: Well, it is in the accusative form and that is bad, but let's get the answer. It i getting close to lunchtime.

Q Were copies made of that letter, if you know?

A I don't know.

Q Do you know the company's lawyer, Mr. McBride?

A Yes.

Q Is he general counsel for the raceway?

A Yes.

Q Do you know that he instructed that it be put in the safe?

MR. KINGHAM: Objection.

Q Or advised?

MR. KINGHAM: Objection.

THE COURT: Were you so instructed by him?

A I am not sure who I was instructed by. I was instructed by --

THE COURT: Just a minute. There is only one question before you. Did he instruct you?

THE WITNESS: I don't remember.

Q Do you know, was he out at the racetrack when this was discussed, the matter of the resignation and the check?

MR. KINGHAM: Objection.

THE COURT: No foundation for any of these questions except your own inference, Mr. Fahringer.

MR. FAHRINGER: I am sorry, your Honor, let me rephrase the question.

Q Mr. Kingham has asked you about the placing of that check and the letter in the safe. Now, may I ask

you this:

Was there some discussion that you had with Mr. Greenberg concerning that?

A No.

Q He indicated to you that you were to do that, is that correct?

A Yes.

Q When that occurred on that day do you recall whether Mr. McBride was also out at the racetrack?

A No, I don't.

Q You don't know?

A No.

Q Did you ever talk to Mr. McBride at all about this?

A Yes.

Q Did he speak toyou about the check being put in the safe?

MR. KINGHAM: Objection, your Honor.

MR. FAHRINGER: Your Honor, I think it relates to this transaction.

THE COURT. I am going to allow it. I think it goes over the mark.

Did he speak to you about the check before you put it in the safe?

THE WITNESS: No.

Q Did he talk to you at all about keeping these papers in the safe?

MR. KINGHAM: Asked and answered, your Honor.

THE COURT: I think --

MR. FAHRINGER: If I might just have an answer to that, your Honor. I won't press it.

THE COURT: You might ask him whether he talked to him before and then you can ask him whether he talked after so that we won't be confused about what he is telling us.

MR. FAHRINGER: All right.

Q Did you speak to Mr. McBride at all any time before these documents were placed in the safe?

A No.

Q Did you speak to him after these documents had been placed in the safe?

A Yes.

Q Did you speak to him about the documents being placed in the safe?

A Yes.

Q Did Mr. McBride at that time indicate to you that it was on his instruction that those papers were

placed in the safe?

MR. KINGHAM: Objection, your Honor.

THE COURT: Sustained.

Q Do you know, Mr. Schoonmaker, as the comptroller of the company and as one of the members of management that this whole matter of the resignation of Mr. Greenberg and -- I am sorry, this resignation of Mr. Grossinger and the return of these funds was investigated?

MR. KINGHAM: Objection.

THE COURT: Sustained.

Q Do you know of your own knowledge whether these matters were taken up at a duly conducted board of directors meeting?

MR. KINGHAM: Same objection.

THE COURT: Sustained.

Q Concerning the mailing of -- the receiving of mail and having bills delivered, did you ever tell the grand jury at any time that the only way you received bills from Grossinger's was either by mail or by delivery? I am sorry, let me rephrase that.

Did you ever tell the grand jury when you were testifying before them that the only way you ever received bills from Grossinger's was through the mail?

A I believe I did, yes.

Q You did tell them that, that that is the only way you ever got bills or did you say it was in the ordinary course of business --

THE COURT: Please.

MR. KINGHAM: I object to that, your Honor.

MR. FAHRINGER: May I withdraw the question and re-put it?

THE COURT: Yes, you can withdraw that question.

Q Mr. Schoonmaker, you testified here today that bills would be delivered to the raceway?

A Yes.

Q You testified that bills would be delivered, the golfing bills would sometimes be delivered to the raceway?

MR. KINGHAM: Objection.

THE COURT: He did say that and he did say something else.

MR. KINGHAM: I will withdraw the objection, your Honor.

Q Didn't you say that bills that came from the pro shop would be delivered to the raceway?

A Yes, on occasion, yes.

Q Did on occasion those bills relate to the

golf outings, that is to say the horsemen's outings?

MR. KINGHAM: Objection.

THE COURT: No, I think he may be asked this question. The jury will keep in mind all the evidence that appears in the record.

Q Did some of those bills relate to the horsemen's outings that were held at Grossinger's?

A Those from the golf pro were only in regards to the golf.

Q What I want to be sure of is if you can tell us, Mr. Schoonmaker, whether you got bills from the golf pro, did that relate to the horsemen't outings at Grossinger's?

A Yes.

Q And they would be delivered?

A Sometimes the pro would give his bill to an individual in charge of the outings, yes.

Q And he would bring it back to the raceway?

A Yes.

Q Were there other bills that were also delivered to the raceway from time to time by other vendors?

A Yes.

Q Including grocery?

A I can't tell you whether there were any from grocery or not.

Q Now, were you examined before the grand jury, if I heard Mr. Kingham correctly reading the grand jury testimony to you, about bills from grocery concerning golf car rentals and golf balls on two dates, June 24, 1970 and July 10, 1970?

MR. KINGHAM: Objection, your Honor.

THE COURT: Whatever the evidence is, it will stand.

Q Did he ask you questions about bills from grocery concerning golfing that was sent to Monticello Raceway on certain dates?

A No.

Q That long question he just read you, Mr. Schoonmaker, a little while ago.

A Well, the question he just read --

Q Sometime ago, about 10 or 15 minutes ago.

A I don't remember the dates, but he did question me in regard to two bills, different dates, in 1970.

Q And they would have related to golf outings, wouldn't they?

A Yes.

MR. FAHRINGER: Thank you.

MR. KINGHAM: May I, your Honor?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. KINGHAM:

Q Mr. Schoonmaker, let me show you again Government's Exhibit 27 for identification; specifically with respect to the bottom of page 9.

Would you look at that, tell me if it refreshes your recollection as to whether the question was about a check of a certain date, but a bill for one golf outing.

A Yes, go ahead.

THE COURT: Ithink all of us will be in a

state of confusion, Mr. Kingham, unless you do something to identify what you and the witness are talking about.

MR. KINGHAM: I'm about to, your Honor.

Q Mr. Schoonmaker, whom in 1970 generally ran the golf outings?

A They were ran by the publicity department.

Q And did you play on any of those outings?

A Yes.

Q Do you know Mr. Jacob Iberger?

A Yes.

Q Did Mr. Iberger go on those outings?

A Yes.

Q And who was in charge of the outings when you got to the hotel that you were going to play at?

A Generally the golf part of it was handled by Mr. Iberger.

Q Let me show you Government's Exhibit 28 for identification and ask you if you recognize that. It appears to be stapled to -- three pieces of paper stapled together. Do you recognize that?

A Yes.

Q What is that, sir?

A It's a bill from Grossinger's Hotel for three car rentals and for golf balls.

Q And you've seen that before, have you not?

A Yes.

Q And is that what we were discussing in the question that I read to you from the grand jury minutes? You may refresh your recollection by looking at the minutes if you wish.

A This says 7/20 --

Q Let me show you Government's 29 for identification.

Can you tell me if you recognize Government's 29? Do you recognize that, sir?

A Yes, I do, yes.

Q Government's Exhibit 29; that is a check, is it not?

A Yes.

Q To pay that bill which is 28?

A Yes.

Q Now, is that not the check and the bill that we were discussing during the grand jury testimony?

A Yes.

Q And so the date for July is the date of the check, the date the bill was paid, isn't that right?

A July 20, 1970.

THE COURT: Now he wants to know whether,

when you said that bills came in by mail, you were talking about a bill for three car rentals and some golf balls. Were you or were you not, according to what you said to the grand jury?

THE WITNESS: Yes. We were talking about three car rentals and some golf balls,and that bill came in the mail, yes.

Q Mr. Schoonmaker, calling your attention to Government's Exhibit 2G, which is the September 30 statement from the Grossinger's, and you said the stamp down at the bottom of that indicated what account it was charged to.

Does that mean the account on the books of Monticello Raceway?

A Yes.

Q What account is that that these expenses were charged to, what account did you carry that in?

A 814.2.

Q What account is that 814.2?

A That's the publicity expenses.

Q Showing you again Government's 28 and 29 for identification, what account was that charged to?

A 812.

Q What account is that?

A I believe that's entertainment expenses.

MR. KINGHAM: Your Honor, Government's Exhibits 28, 29 for identification offered.

MR. FAHRINGER: No objection, your Honor.

THE COURT: Received.

(Government's Exhibits 28 and 29 were received in evidence)

Q Mr. Schoonmaker, with respect to Government's Exhibits 28 and 29, did you furnish those to the grand jury pursuant to subpoena?

A Yes.

Q Were they kept before you brought them down here from Monticello?

A In the regular files.

Q Were those the files that are kept under your supervision?

A Yes.

Q At the time you brought them down pursuant to subpeona was anything else attached to Government's Exhibit 28 for identification or is that the way it was kept in the files?

A You mean was this the bill -- are you asking me is this the exact billing as I brought it down to you?

Q That is correct.

A Well, I don't remember if there was an attachment on it and you took it off, I wouldn't know.

Q Let me show you, reading, refresh your recollection from Government's Exhibit 27 again, at the bottom of page 9, the top of page 10, whether at the time you brought that exhibit to the grand jury there was anything else attached to that page, if you know?

A To my knowledge, there was nothing else attached to it, no.

MR. KINGHAM: Nothing further, your Honor.

MR. FAHRINGER: May I, your Honor, just a few questions on recross.

THE COURT: Yes.

RECROSS-EXAMINATION

BY MR. FAHRINGER:

Q Did you say, Mr.Schoonmaker, that you attended some of these golf outings in 1970 at Grossinger's?

A Yes.

Q About how many did yousay, would you say you went to?

A Three or four.

Q And how many men were in each one of those, as best you recall?

A I couldn't tell you definitely.

Q Give us your best estimate.

A Sometimes there was 20 men, sometimes 25, sometimes 30 o 40.

Q This was in 1970 at Grossinger's?

A Well, this is every year. I mean.

Q I am asking you specifically about 1970, do you recall 1970?

A I recall playing golf at Grossinger's two or three times.

Q In 1970?

A Yes.

Q All right. Can I ask you this: Were they horsemen, what would be called, what we have been referring

to in this courtroom as horsemen's outings?

A Yes.

Q And you mentioned a man by the name of Jack Iberger, was he from the Monticello Raceway?

A Yes.

Q Was he the man that you identified as being in charge of these?

A Of the golf outing, yes.

Q Incidentally, do you know as comptroller of the Monticello Raceway how much is spent every year on the entertainment of horsemen, roughly?

A I can't give an exact figure, but I know it is a figure probably in excess of $20,000.

Q Can it go as high as 50,000?

MR. KINGHAM: Objection.

THE COURT: I suppose it can go up to the sky. What do you mean?

MR.FAHRINGER: Let me ask this question, then, your Honor.

Q In terms of your experience and the amount of money that was spent on horsemen, what is the most that you can recall in any given year that money was spent on entertaining them?

A This year I know we spent this year probably

over 40,000.

Q Incidentally, in terms of the two accounts, entertaining and publicity, those two accounts that charges are put into, are those two categories closely related to one another?

A Yes.

Q Is it a situation that sometimes when you are going to put a charge for, let's say, entertaining horsemen, could that go either in the entertaining account or could it go in the publicity account?

A It could go in three, four different accounts depending on who put it there.

Q Incidentally, do you know -- did you go out on most of these outings yourself and play golf? Do you play golf?

MR. KINGHAM: Objection, your Honor.

THE COURT: He hasn't said anything about most of these outings. He said he played there two or three times. When did you play there, do you know? What dates, what months?

THE WITNESS: No, I don't know.

THE COURT: Was it in the spring or the fall or the winter?

THE WITNESS: Summertime.

THE COURT: In the summer. Were you there the day that this cart charge was incurred in June?

THE WITNESS: I couldn't tell you.

THE COURT: But you were there three or four times at the most?

THE WITNESS: At Grossinger's, yes.

Q Were you familiar with the procedure whereby a list was put up in the racing section building and the men signed up on that sheet?

A Yes.

Q Do you know what was done with that sheet then once it was completed in the racing section building?

A I believe it was picked up and brought into the publicity department.

Q Do you know then whether anyone within the racetrack would then call the hotel from that sheet and tell her how many men were coming up?

MR. KINGHAM: Objection.

THE COURT: Well, were you there when they functioned in their area, or is this something somebody told you?

THE WITNESS: I don't understand.

THE COURT: I say, these sheets you say were taken around to publicity.

THE WITNESS: Yes.

THE COURT: From that point on, do you know -- were you personally present when they did anything about it?

THE WITNESS: No.

MR. FAHRINGER: That is all the questions I have,your Honor.

THE COURT: Anything else, Mr. Kingham?

MR. KINGHAM: No, I have not, your Honor. Thank you.

THE COURT: Thank you very much, Mr.Schoonmaker. You are excused.

(Witness excused.)

THE COURT: Ladies and gentlemen we will now recess for luncheon and resume at two o'clock.

May I say this to you before we depart: My attention has been called to the fact that some modest and not in any way extensive publicity may have been given to the case itself. Bear in mind that there is nobody who is better qualified to know what the facts are than the jury because the jury is sitting here listening to the evidence.

And the newspaper accounts or the television accounts are not for the benefit of the jury, they are for the benefit of others who don't come here.

Accordingly, if you should happen to glance

at anything or in the course of your relaxation at night on the television watch anything on a news program, it would be proper during the course of this trial for you to ignore it completely and turn it off, go to something else.

Bear in mind that you will have to concentrate on what you hear and see in this courtroom, uninfluenced by anything that you hear or see outside of the courtroom.

Just do the best you can to maintain your perspective on what your function is, and that is, to consider the evidence that is brought here and only the evidence that is brought here.

All right, you may go out.

(Jury left the courtroom.)

(Luncheon recess.)

---

AFTERNOON SESSION
2:00 P.M.

(In open court; jury present.)

P A U L A B E R G M A N, 600 West 239th Street, Riverdale, New York, called as a witness by the Government, being first duly sworn, was examined and testified as follows:

THE CLERK: Please keep your voice up.

DIRECT EXAMINATION

BY MR. BLOCK:

Q Miss Bergman, you have to speak so that I and the last juror in the box can hear you.

A Yes.

Q Miss Bergman, are you employed?

A At the present I am not.

Q Have you in the past been employed?

A I have been working in temporary positions and before that I worked for an industrial processing equipment company. I worked for an industrial engineer at that company.

Q Did you have any employment prior to that time?

A Until 1974 I was at Grossinger's at the golf club as an employee.

Q What were your duties?

A At Grossinger's,among my other duties, I

worked as the golf clubhouse secretary.

THE COURT: Would you just hold it a minute.

Can the members of the jury hear this young lady?

I am going to have the last few answers reread. Please don't sit quietly. Just put up your hand if you cannot hear.

Could you read back a half dozen questions and answers, please.

(Record read.)

BY MR. BLOCK:

Q Miss Bergman, were you the gold clubhouse secretary?

A Yes, I was the golf clubhouse secretary.

Q Could you please tell the Court and the ladies and gentlemen of the jury what your duties were as the golf clubhouse secretary?

A As the golf clubhouse secretary I kept records. I kept records of the golfers, green fees and golf carts.

Q You say you kept records, do you mean you kept records of who played golf at the golf course?

A That is correct.

Q By the way, when did you first start working as golf clubhouse secretary at Grossinger's?

A Approximately 1964.

Q Did you work at Grossinger's before 1974?

A Yes, I did.

Q What did you do and when did you do at Grossinger's before becoming golf clubhouse secretary?

A In approximately 1962 I worked in the telephone reservations, I worked in the executive offices, I worked as a reservation clerk in the front office.

Then, I was sent up to the golf club. After the golf club closed I went to the ski lodge.

Q When you say "after the golf club closed," do you mean after the season for playing golf is at an end?

A That is correct, the golf club closed at approximately November and then I went on to skiing.

Q You say as golf clubhouse secretary you maintained records, is that correct?

A That is correct.

Q Would you please tell the ladies and gentlemen of the jury and the Court the manner in which the records you kept were kept by you?

A The manner in which I kept these records were as follows: I kept records on a four-part voucher form. As each guest came to the desk to register -- there were four copies of this form, as I mentioned. They were different colors. There was white, pink, yellow and green.

Each guest signed in, they gave their name, they gave their room number, if there was one. They stated the convention they were with or the group or if they were outside players, I wrote "non-registered guests." This was for billing purposes. At the end of the day I brought down these bills and the cashier posted them accordingly.

Q What, if you know, did the cashier's office do with the slips that you brought to them?

A If I brought them the cash receipts, they accounted for the cash and signed my receipt book and if I handed them charges, they took the charges from me and posted them to the guest's room or to the proper account.

Q Could you describe physically how one of these forms appeared?

A These forms were in numerical order and they came out of the machine, which was on my desk at all times.

Q Was there any printing or lettering on the forms?

A These forms were Grossinger's Hotel golf forms.

Q I am sorry. Have you finished your answer?

A Yes.

Q Were there any columns or lines for entries of any kind printed on the form?

A Yes, I would print -- do you mean what I would print?

Q Before you touched the form, as it came out of your machine or went into your machine?

A These forms were printed with the starter's copy, guest copy, cashier's copy and control copy. There was a carbon in between each of these copies.

THE COURT: Starter, guest, what was the third one?

THE WITNESS: Cashier's copy and control copy.

THE COURT: Cashier and control. Were they numbered?

THE WITNESS: They were numbered.

THE COURT: In sequence?

THE WITNESS: They were numbered in sequence.

Q Miss Bergman, did you make entries on these forms?

A Yes, I did. I wrote the name of the guest, their room number, what group or convention they were with, whether they paid cash or charged it.

Q Were there separate columns on the form for cash items and for charge items?

A That is correct. One thin line separated the cash from the charges.

Q Now, you have testified that this form was in several parts. The starter's copy, a control copy, a

cashier's copy and a guest copy.

Did you retain all of the copies when you prepared one of these forms?

A I gave the guest his copy. I gave him the white starter co[illegible]. I kept the green control copy for the cashier's at the end of the day and the pink copy stayed in the machine. These forms were used, the white particular form was used to give to the starter before the guest started to play golf.

Q Were you working as the golf clubhouse secretary during July and August of 1970?

A Yes,sir.

Q Was the record keeping voucher system you just described in use at the Grossinger golf club during those months?

A That is correct, sir.

Q During July and August of 1970, was there a regular work schedule that you followed?

A Yes, there was a regular work schedule.

Q What was that schedule?

A I worked six days a week, sometimes seven, and every four weeks I worked five days. I had two days off.

Q Were there regular hours on each day that you worked that you were at the golf clubhouse?

A Yes, that is correct. I worked from 8:00 to 4:30. 8:00 A.M. to 4:30 P.M.

Q Now, if you know, what was the procedure that was followed for staffing the golf clubhouse on the days that you didn't work?

A I had a regular relief person that would come up to the desk and work on my days off.

Q With respect to the days that you did work, but for the part of the day when you weren't at work, either before you came to work at eight o'clock or after you left work at 4:30 or if for any reason in between then you had to leave the clubhouse, do you know what the procedure was for staffing the clubhouse?

A My desk was always covered by someone, by someone that was working at the golf clubhouse. I had money in my desk. I never left the desk unattended unless an appropriate person was there to watch it.

Q During these times when you were either not working for the day or were not present at the clubhouse during part of the day, do you know what record keeping system was followed or used in the clubhouse then?

A The same type of record system that I keep was supposed to be followed at all times.

Q Was this record keeping or voucher system in use at the Grossinger golf club during the entire time that you worked there?

A Yes, sir.

Q Would you tell the ladies and gentlemen of the jury and the Court the period of time that you worked at the clubhouse, that is, when you first started working there and when you left the clubhouse?

A In time?

Q In the course of your entire employment at Grossinger's?

THE COURT: What year did you start?

THE WITNESS: I started at Grossinger's in approximately 1962 and I worked until June of 1974.

Q When did you start working at the golf clubhouse?

A Approximately 1964.

Q Did you work at the clubhouse continuously from 1964 until the time you left Grossinger's in 1974?

A That is correct.

Q Miss Bergman, are you familiar with the term "horsemen's outing"?

A Yes, I am.

Q What is a horsemen's outing?

A The horsemen's outing was a group of gentlemen from the Monticello Raceway that came up periodically to play golf and to have lunch and to have a tournament at the clubhouse,a golf tournament.

Q During the time that you worked at Grossinger's at the golf clubhouse, were there horsemen's outings?

A Yes, there were.

Q What record keeping procedures did you follow when there were horsemen's outings?

A I followed the same record keeping procedures as always.

Q That is the vouche. system?

A The numerical voucher system, correct, sir.

Q When a group of horsemen from Monticello Raceway would come to Grossinger's on a golf outing, how many vouchers did you fill out?

A I was told to fill out for everyone a single voucher. If time didn't allow, I would put two together, if they rode on the same cart. I would try to fill out each voucher as I was told for each person.

Q Miss Bergman, is it your testimony that you would fill out one voucher for the entire group or you would fill out one voucher for each member of the group?

A One voucher for each member that was playing, each guest.

THE COURT: Each golfer?

THE WITNESS: That is correct, for billing purposes I was instructed to do it this way.

Q What entries did you make on the vouchers when there was a horsemen's outing from Monticello Raceway?

A Under the name of the Monticello Raceway guest, I would put Monticello Raceway or Monticello Racetrack.

Q What was the purpose of this entry?

A That was for billing purposes.

Q Was that to alert the cashier's office that this was a golf outing of Monticello Raceway?

A That is correct.

Q Miss Bergman, I would like you to look at

what has been marked as Government's Exhibit 30 for identification.

A Yes, sir.

Q Do you recognize the contents of that exhibit?

A Yes, I do. These are green Grossinger cashier's copies of the vouchers, the golf vouchers.

Q How do you recognize the contents of Government's Exhibit 30 for identification as Grossinger golf vouchers?

A I recognize the contents, sir, because I wrote almost all of them. My initials are on them and where I don't see my initials, I recognize the style and I recognize what these vouchers are.

Q You recognize the handwriting on the vouchers?

A I do.

Q Whose handwriting is that?

A It's my handwriting. Some of it is the shop manager's and one or two belong to the golf pro.

Q Do you know approximately how many of the vouchers in the box there you, yourself, filled out?

A I would say I filled out about 90 per cent of these vouchers.

Q Do you know the time period to which those

vouchers refer?

A They are from the summer of 1970, July and August.

Q Have you seen this exhibit before?

A Yes, I have.

Q Where did you see it and when?

A In your office during the previous week.

Miss Bergman, do you know whether or not Exhibit 30 for identification contains all of the golf vouchers that were prepared at the Grossinger golf clubhouse during July and August of 1970?

A Well, going over these vouchers and checking them in numerical sequence, there are approximately 50 missing. On August 30 the whole day seems to be missing.

Q Do you know how many slips appear to be missing for August 30?

A About 15.

Q Now, Miss Bergman, in the regular course of your duties as golf clubhouse secretary, did you prepare the vast majority of those vouchers?

A Yes, I did.

Q Was it your responsibility and your duty, as an employee at Grossinger's, to prepare those vouchers?

A Yes, it was.

Q Were those vouchers prepared at or about the time the golfing and other items referred to on the vouchers actually -- strike that.

THE COURT: Were incurred? Is that what you want, "were incurred"?

Q Were incurred?

MR. BLOCK: Thank you,your Honor.

A May I ask you to repeat that, please?

THE COURT: Were these vouchers made out at or about the time of the transactions reflected thereon?

THE WITNESS: Yes, they were.

MR. BLOCK: Your Honor, I offer Government's Exhibits 30 in evidence.

MR. FAHRINGER: Your Honor, may I examine on the voir dire.

VOIR DIRE EXAMINATION

BY MR. FAHRINGER:

Q Mrs. Bergman, do I understand that these are the slips that would go up to the cashier's office?

A That is correct, sir.

Q And I take it that when you would finish with the slips that are being offered in evidence,

they would leave your control and go up to the administration building?

A I would hand them to the cashier, sir, and they would sign for them, if they were cash --

Q I am sorry, you would deliver them up?

A Right, I would personally take them down with the money, I would take down the cash receipts and the charges.

Q The other copies, the copies that remained in the clubhouse, I think you said there was one copy that stayed in the machine?

A That is correct.

Q What happened to that copy?

A What happened at that time or what happened years after that?

Q Well, do you know where they are for 1970, the pink copies?

A Yes, I do, sir. They were thrown out.

Q They are destroyed?

A Yes, because no one had ever told us to save them and there was no storage space. They were kept where the golf bags were and the golf clubs and after two or three years passed, they discarded them.

Q Do I understand then that what you have

there, if a person came in and was a guest at the hotel, and played golf, he would sign up by putting his room number down and his name, is that correct?

A Yes, sir. I would write his name and his room number.

(Continued on next page)

Q You did all the wriqing?

A Right. He would then sign it on the bottom, he would sign his slip and then take that out to the golf -- I wrote it because I wrote clearly and I was told to, sometimes they would scribble it, but I wrote it because I was told to.

Q Then if a person was paying cash, they would give you the money, whatever the greens fees were, and the cart charges, you were to take that money, with the slip which reflected those charges and you'd also take that up to the cashier's office?

A Right. I didn't take money for cart charges. I only took for cash transactions.

Q I understand. I'm sorry. I misspoke. If they paid for the cart --

A If they wanted to pay cash for it, I took the cash.

Q You took that?

A Right.

Q Now, do you know Mr. Roth?

A Mr. Bernard Roth?

Q Yes.

A Yes.

MR. BLOCK: Objection, your Honor.

THE COURT: Overruled.

Q Do you know that they didn't start any carts for Monticello, at least he testified, until 19, the latter part of 1970?

MR.BLOCK: Objection, your Honor.

THE COURT: That is objectionable.

Q Well, let me ask you this: The exhibits you have in front of you would be exhibits that would be charged then, I take it, in the cashier's office to the guest cards, is that right, the room numbers?

THE COURT: Are you familiar with the accounting procedure once you gave up the green copies?

THE WITNESS: Yes, I am. Only because of my own knowledge. I didn't have to be familiar with their procedure. I just knew what they did with them. They were posted to the guest's account or they were put on a master bill or whatever they had instructed. This is the rules that they followed, from the bookkeeping office or the cashier's department.

Q Isn't it true that the procedure in the years 1970, '71, '72 and '73 changed somewhat?

A Sir --

MR. BLOCK: Objection, your Honor.

THE COURT: No. Did it change? Never

mind whether it's true. Did it change?

A I followed the same procedure from the time I went to the golf clubhouse as secretary. I don't recall it changed, sir.

Q Well, do you recall that in terms of the golf outings in 19 -- if you know -- in 1970, do you know in 1972 or 1973 they started setting up ledger cards and actually put the golfers' names on the ledger cards?

MR. BLOCK: Objection. Scope of voir dire, your Honor.

THE COURT: Sustained.

MR. FAHRINGER: I will object to those, if it please your Honor.

THE COURT: I will look at them.

You say these are all in numerical sequence?

THE WITNESS: Yes, they are, sir.

THE COURT: For the two months we are talking about, July and August 1970, and except for 15 missing for the last day of August 1970, and some others that may be missing?

THE WITNESS: Right.

THE COURT: Which would apply to either one or, at most, two golfers in each case?

THE WITNESS: There could be a foursome on one slip, sir. No more than four or six. I was told not to do that, but where time didn't allow, I was told it was okay. If I put more on one slip I would jam up the tee, and we don't do that.

THE COURT: Now, the pre-numbering that you referred to, is that the number in red down at the bottom of these cards?

THE WITNESS: Yes, sir.

THE COURT: I don't mean cards, I mean copies.

THE WITNESS: Copies, right.

THE COURT: And you say that these were issued in the numerical sequence in which the numbers appear ordinarily, is that right?

THE WITNESS: That is correct, sir. I checked the numberical sequence, and there are no gaps.

THE COURT: There are no gaps for July and August?

THE WITNESS: Except on the days that I mentioned. For instance --

THE COURT: And those days were again what date?

THE WITNESS: August 30 is missing. There are approximately 15 missing for August 30, and

through the season there are approximately 50 missing.

THE COURT: Well now, August 30, according to the calendar, was on a Sunday. And was there any other date that you identified that was missing?

THE WITNESS: After checking through them, that was the only complete day that is missing. They were missing after I handed them in.

THE COURT: Did you find any missing on Wednesday, in July and August, if you recall?

THE WITNESS: There were some missing on August 5th. There were two missing.

THE COURT: Two missing on August 5th. That was a Wednesday?

THE WITNESS: I don't know. If you say so, sir.

THE COURT: I have the calendar right in front of me.

THE WITNESS: Right.

THE COURT: The offer is received.

(Government's Exhibit 30 was received in evidence)

BY MR. BLOCK:

Q Miss Bergman, did you look through all the vouchers that are in Government's Exhibit 30?

A Yes, I did.

Q What was the purpose of your examination?

A To check the numerical sequence of these vouchers and to look for Monticello Raceway outings.

Q What were the results, what did you find from your examination?

A I didn't find any for the month of July and August, the summer season.

Q That is, you didn't find any for horsemen's outings?

A I found none for horsemen's outings, that is correct.

Q Do you know approximately how many slips you looked at in that exhibit?

A There are approximately 2700 slips in this exhibit.

Q You looked at each one of them?

A Yes, I did.

Q In particular, did you look at all the slips that were dated July 8, 1970?

A Yes, I did.

Q Do you know whether all the slips bearing that date were all the slips that were issued in the golf clubhouse that day?

MR. FAHRINGER: That is objected to, if it please your Honor, calling for a conclusion.

THE COURT: Well, you can correct that by saying, were those slips on July 8 all in numerical sequence without any gaps?

MR. BLOCK: That was to be my next question, your Honor.

THE COURT: Well, we will go to the second one first.

Were there any gaps in the numerical sequence on July 8, if you recall?

THE WITNESS: Yes. I recall after looking at the slips that there were no gaps in this numerical sequence. If I ended with the slips on July 7 with a certain number, say it was 100, I would start July 8 with 101, and if I ended with 150 on July 8 I started July 9th with 151.

THE COURT: In between 100 and the next number, say, 200, were there any missing numbers?

A The numbers ran in complete numerical sequence, sir. There were no gaps, strict numerical sequence.

THE COURT: When you say there were no gaps, there were no slips missing?

THE WITNESS: Right.

BY MR. BLOCK:

Q Now, Miss Bergman, in looking at the complete sequence of slips for July 8, 1970, did you find any for an outing of 31 horsemen and Monticello Raceway officials at Grossinger's?

A I found none.

Q Did you look at vouchers for July 22, 1970?

A Yes, I did.

Q And was the complete numerical sequence of vouchers for that date present in the exhibit?

A The numerical sequence was complete. There were none.

Q In looking at vouchers for July 22, 1970, did you find any for an outing of 46 horsemen, pressmen and Monticello Raceway officials at Grossinger's?

A There were none.

Q Miss Berg, did you also look at vouchers for August 5, 1970?

A Yes, I did, sir.

Q Was the numerical sequence of vouchers for that date complete?

A On August 5th there are two slips missing, two vouchers.

Q Other than those two vouchers was the

sequence complete?

A The sequence was complete.

Q And of all the vouchers you looked at for August 5, 1970, did you find any for an outing of 27 horsemen and Monticello Raceway officials at Grossinger's?

A Absolutely not.

Q Miss Bergman, in your experience as golf house secretary, is it possible that an outing of 27 people, that is, the records you are required to keep for an outing of 27 people at the golf course could be placed on two slips?

MR. FAHRINGER: I will object to that, if it please your Honor.

THE COURT: The objection as to form is sustained only.

Q Miss Bergman, how many slips would you prepare if an outing of 27 people came to the golf course?

A At least 12 or more; if I followed my orders to put on or two golfers on a voucher.

Q Did you follow those instructions?

A Yes, I did, I followed those instructions completely at all times.

Q Miss Bergman, did your examination of the contents of Government's Exhibit 30 also include an examination, a specific examination of vouchers for August 12, 1970?

A Yes, they did.

Q Was the numerical sequence of vouchers for that date complete?

A Absolutely complete.

Q In looking at the August 12, 1970 vouchers did you find any for an outing of 27, rather 21 horsemen and Monticello Raceway officials at Grossinger's?

A I found none.

Q Did you also examine vouchers for August 26, 1970?

A Yes, I did.

Q Was the numerical sequence of vouchers for that day complete?

A Absolutely.

Q Did you find any vouchers for an outing of 43 horsemen, pressmen and Monticello Raceway officials at Grossinger's?

A There were none, sir.

MR. BLOCK: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. FAHRINGER:

Q Miss Bergman, do I understand that you used to work in some weeks six days and then you'd be off one day, and other weeks you'd work five days and you'd be off two days?

A That is correct. Every fourth week we were given two days off to make up for the six-day week.

Q May I ask you this: Do you know now, of your own knowledge, whether you worked on July 8th?

A Yes, I did work, sir.

Q You know you did for sure?

A Yes.

Q And how do you know that?

A The slips are here, my name is on those slips.

Q And you recognize those as working on that day?

A My initials are on them, sir.

Q What about on July 22?

A I worked on that day, too, sir. My initials are also on these slips, and I recognize my handwriting.

Q August 5th?

A Yes, sir.

Q August 12?

THE COURT: What does yes, sir mean, that you worked?

THE WITNESS: Yes, I worked. Yes, sir. Yes, I worked.

Q August 12?

A Yes.

Q And August 26?

A Right.

Q Now, you are not saying, are you, Mrs. Bergman, that no horsemen outings took place during 1970 of Monticello horsemen, are you?

A I found none in my records, sir.

Q I'm asking you whether you are saying here under oath that no horsemen outings took place?

A According to the records that were kept, no.

Q May I ask you this: Of your own knowledge, your recollection of 1970, being up there that summer, working in the pro shop, are you saying here under oath to this jury that no outings took place at all that summer?

THE COURT: Are you talking about July and

and August, or the whole year?

MR. FAHRINGER: July and August.

THE COURT: Your question might have been construed to mean 1970.

MR. FAHRINGER: I'm sorry, your Honor. May I reframe the question?

THE COURT: Yes.

Q Are you saying here today that in July and August of 1970 no horsemen's outings took place?

A That is correct, sir; according to the records.

Q Please,Miss Bergman, I'm sorry, I don't mean to press you on this. I'm asking you, apart from the records, from your own recollection, are you saying that no, you know of your own knowledge, that no horsemen's outings took place during July and August of 1970?

A That is correct, sir.

Q You are saying that of your own knowledge?

A Of my knowledge of my work.

Q All right, then maybe I ought to put it to you: Your testimony here today is based upon the records that you have examined, is that right?

A Yes, sir. If everyone at the Grossinger golf club was doing the work they were supposed to there

couldn't have been any outings without me having a record of it.

Q Do you recall receiving a telephone call this past week on November the 4th and speaking to a man by the name of Jack Cossolini?

A Yes, I do.

Q Do you remember him asking you whether you worked there during the summer of 1970?

A I didn't pay too much attention to any of the questions he asked me, sir, because he told me first he was a bartender. He then told me he worked for a defunct stockbrokerage company and then he told me he had recently passed a New York State private investigator's license examination. I didn't think I should talk to the gentleman.

I answered one question that he asked me, and he asked if he could come up to see me. I wouldn't let someone of that nature into my house, nor would my mother, who I live with.

Q Did you talk with him overthe telephone?

A I spoke briefly with him on the telephone.

Q May I ask you this: Did you tell him that there were horsemen's outings, that is to say, Monticello horsemen's outings during 1970?

A I don't think -- he didn't ask me that question.

(Continued on next page)

Q He never asked you a question at all whether you knew there were outings in --

A Not to my recollection.

Q Then are you testifying here that you never told him that there were outings, two or three outings, in 1970?

THE COURT: Again are you talking about July and August or are you talking about the year 1970?

MR. FAHRINFER: I am sorry, your Honor, I am talking about July and August.

A Sir, he asked me one question.

Q Can you answer my question?

A Yes, would you repeat it.

Q Did you or did you not say to him that there were two or three outings, horsemen's outings in 1970, during the months of July and August?

A I wouldn't tell him that, sir. I did not tell him that.

Q Is your answer no to that?

A Yes, I would say so.

Q To you knowledge no?

A Yes, I would say no.

Q Let me ask you this: Do you recall him asking you whether there was a sign-in sheet for the horsemen and

you said there could have been?

A I said there was a tournament sheet which they signed if they wanted to play the tournament or we put their names down and if they were there they would sign with me at my desk for vouchers.

Q Do you know, incidentally, a man by the name of Peter Donnelly?

A Yes, I do.

Q He was the golf pro at that time?

A Correct.

Q And he was your superior, wasn't he?

A Yes.

Q Do you recall him making out what they called a blanket slip, a slip that he would make out where he would put 27 or 13 or 14, just the number on it, and put golfers and put it under the name of Jake Iberger, do you recall him ever doing that?

THE COURT: Again what period of time?

MR. FAHRINGER: 1970, July or August.

A I don't recall anything that Pete might do. I know what I did.

Q Then you are saying that you don't know whether he did that or not?

A Right, correct. That was my job, sir.

Q Do youalso know that as far as the Monticello golf outings are concerned, he from time to time worked with Mr. Iberger?

A Do you mean worked with him as pertaining to teaching golf or to what?

Q The tournament, the golf.

THE COURT: I think that you ought to make that more specific because you are both talking at one time there. I don't know how much the reporter got.

Q Do you know from your experience up there working in the clubhouse, did you know a man by the name of Jake Iberger?

A I don't know him personally, sir. I met him through golf.

Q I am asking you then, did you see him up there at the clubhouse from time to time?

A From time to time, yes, but they were not outings. He came up to play golf.

Q Did you ever see him at an outing?

A Not in 1970 because I don't have any slips for that, sir.

Q Well, then you are saying you didn't see him in 1970 because you don't have any slips, is that it?

A I don't have any outings for that time, sir.

Q That is all I am asking you.

A You asked me about an outing.

Q I am asking you whether you recall in July or August of 1970 seeing Mr. Iberger at Grossinger's golf club with the horsemen on an outing, do you recall?

A I don't recall, sir. I don't remember. I didn't see him. I didn't see any outing in July and August of 1970.

Q I beg your pardon?

A There was no outing in July and August of 1970.

Q You are saying there was no outing based upon the records, aren't you?

A That is correct, sir.

Q All right. Now are you saying that you didn't see him in July or August in connection with an outing because there is no record to support that?

A At any time that he may have been up there, if he came up with people from Monticello Raceway they came up to play golf, they paid regular green fees and they went out to play golf. They were not outings. They were on their own.

Q Incidentally, is July and August, and I suppose, -- well, let me just hold it to July and August -- are July and August at Grossinger's fairly busy days as far as golf

is concerned?

A Yes.

Q And would it be fair to say that in a given day that you could have what, 200, 250 golfers go out?

A Yes.

Q Okay. And that would mean, then, based upon your testimony, that if you made out one slip for each person, you would have maybe 200 and some slips of i you made out one slip fo r two people, that would mean that there would be maybe 125 or so, is that correct?

A Right. There are in here 2700 slips for that period of time you mentioned, according to the numerical system.

Q Let me ask you this, in checking July 8 of 1970, which is one of the dates in issue here, I show you, if I may, your Honor, the slip numbers run from 17304 to 17346; 42 slips, 58 golfers on that day. Does that check with your figures, or didn't you make any, didn't you break them down that way?

A I didn't break them down that way, sir. I checked the slips.

Q Do you have any reason to dispute those figures that on July 8th the serial numbers run from 17304 to 17346, which works out to 42 slips?

THE COURT: There can't be any mystery about it. Take out the July 8th slips, and then we won't have to worry about counsel's calculations.

THE WITNESS: Sir, I have --

MR. BLOCK: If Mr.Fahringer is going to show the witness something I request they be marked for identification, and --

THE COURT: We will take care of that. You don't have to do that at this time. Just take out the July 8th slips.

THE WITNESS: Youwant me to take them out, sir?

THE COURT: Take out the July 8th slips, yes.

All right. Now Mr.Fahringer wants you to look at those, and see whether the first one for that day starts at 17304, and the last one for that day goes to 346.

THE WITNESS: Sir, I have made a note of what the numbers started with and stop with. I have it written down.

THE COURT: All right, then give it to us.

THE WITNESS: The notes are over there, sir. I don't have the notes. No one told me to bring them with me.

THE COURT: Mark that for identification, and give it to the witness.

THE WITNESS: These are not in strictly numerical order.

THE COURT: All right. But you made a list?

THE WITNESS: Yes, I did.

THE COURT: This is your list?

THE WITNESS: May I see it?

THE COURT: Yes.

(Government Exhibit 3522 was marked for identification.

THE COURT: Does that help you answer the last question?

THE WITNESS: Yes, I started with 17304.

THE COURT: And finished at what, on that day?

THE WITNESS: I finished on tht day with 17346, 17346.

THE COURT: That is what Mr.Fahringer said.

Q That would be 42 slips, wouldn't it?

A Approximately -- yes, sir.

Q And then would you go, please -- would you pull out August 12th slips, please.

A May I put these back or do you want me --

THE COURT: May I borrow those while you are

looking at the other ones.

THE WITNESS: Sure. What was the date, sir?

Q August 12. And I wonder if you might look at your notes, too. Does August 12 show only 39 slips for that day?

A I started with 16516, I ended with 16549.

Q toes that work out to 39 slips the whole day?

A Approximately, yes.

Q Incidentally, do golfers at the Grossinger's, do they start out early in the morning and can they play till dark?

A They would, they were supposed to start at 8:00 o'clock, the golf course was not ready before that. They played until approximately six o'clock, the last cart went out about 4:00, they didn't start out after that because it got dark and they wouldn't finish.

Q You mean no carts went out after four o'clock?

A Well, after about 4:30, sir, because of the fact that they couldn't get in a complete 9 or 18 holes.

Q In August?

A They had to bring back the carts,that is correct, sir.

Q You mean, could they go out and play nine holes?

A They could, at 4:30 they could play nine holes.

Q It doesn't get dark until 8:30 as far as August is concerned, does it?

THE COURT: She is talking about when the carts have to be home.

Q Well, you want the cart back before it gets dark, don't you?

A That is correct, sir, the car man has to stay until the last cart comes in, and he leaves at a certain time, and he usually left when the last cart came in.

Q Is it your testimony that no carts would go out after four o'clock?

A If any carts went out, sir, the people would sign for the carts. If I wasn't there, someone would see to it that they signed at my desk, they had to have a voucher.

Q I am not challenging that. What I am asking you is, are you saying here that no carts went out after four o'clock, no one went out to play after four o'clock?

A They did go out,sir.

Q Oh, all right.

A Yes.

Q Now on August 26, would you look at that date, please.

THE WITNESS: Would you like these, sir?

THE COURT: No. Thank you.

Q Do they start with 19074 on that day?

A That is correct.

Q Do they finish with 1937?

A 19137.

Q I am sorry, 19137.

A Right.

Q That would be 63 slips for that whole day, is that right?

A Approximately, yes.

Q And going to August 5, please, if you would, would you look atyour notes, please.

A Yes, sir.

Q On August 5, do the slips run from 18607 to 18661?

A That is correct.

Q Would that be 54 slips for the whole day?

A Yes, sir.

Q And then finally on July 22, of 1970 --

A Sir, on August 5th there are two slips missing, we have to account for those two slips missing.

Q So that would make it 56 slips?

A Right.

Q On July 22nd of 1970, do the slips start on that day, if you will look at your notes, please, at 17974,

and do they conclude with 18033, or a total of 59 slips for that whole day?

A Yes. They ended with 18033, but somehow one or two of those got in with the next day. There is a different date, but there they are. They got in with the 23rd for some reason.

Q All right. Now may I ask youthis, if you will, please, do you say that there areonly about 50 slips missing fr[illegible] all the numerical orders the[illegible]

A Approx[illegible]ately 50, sir. There are 15 missing on August 30 --

Q Your compu[illegible]ations, any way you worked it, didn't come to 465 missing slips?

A No, sir.

Q And you accounted for every missing number?

A I couldn't account for the ones that were missing.

Q I am sorry, what I mean to say is, your computation of some 50 missing slips was based upon all numbers that were not in sequence, in other words, if you caught a gap of some 30 or 40 numbers, then you would list those, right, as missing, 30 numbers that aren't accounted for?

A Right, because I could tell by the numerical sequence of where I started, where I ended and where I started the next day and where I ended.

Q And you don't -- I am sorry, I didn't mean to interrupt you. And starting with all the slips in that box, you didn't come to a figure of 465, 465 missing?

A No, I didn't, sir. 465 missing slips?

Q Yes, let me ask you this: Why don't you go to -- see if you can find slip #16800.

A What date?

Q Well, I am sorry. They don't run in sequence from say July straight through to August?

A They run in numerical sequence according to the packs that I used. There are 200 in a pack.

Q I am sorry. I thought they ran in numerical sequence all the way from July through August with the exception of the 50 that are missing.

A They do.

Q Okay. Then can't we find --

A What date, sir?

Q I am sorry, I only have 16800 here. Can we find that by just going numerically?

A 16800?

Q May I askyou this, are they arranged from July straight through August, the way you have them?

A They are not arranged in numerical orders, you mean these slips now?

Q What order are they arranged in?

A They are in all kinds of order, sir. There is charges, no charges, cash charges. These are not in numerical order at this time.

Q Could I ask youthis then, I am sorry, I didn't understand that: Do your notes, do your records show a gap between a slip number, this would be the red number, 16800 and 16936, a gap of 136 slips?

A Sir, this is on July 1st. My lowest number is 1696 something. I don't know what slip you are referring to. What is the number again?

THE COURT: 16800. Do you have anything in there that has got a 16800 on it?

THE WITNESS: All my slips are from 169 up. I don't know what happened before July 1, sir.

THE COURT: In other words, on July 1 you were using a pack that started with 16,900 figure, and Mr. Fahringer is talking about an earlier number.

THE WITNESS: Let me check through the entire day for July 1st. I just checked through some there. I can tell you.

Sir, as you can see, there are 169.

THE COURT: 16800; would that have been in June; is that the point?

THE WITNESS: Yes, sir, probablythe end of June. I don't have that.

Q I am sorry, you gave us figures initially in July 8 of 1970. You gave us figures of 17346. And 17304. That worked out to 42 slips. Those were from your notes, I believe.

A Right.

Q Would you look atyour notes, please?

A I have them right here, sir.

Q THose slip numbers were 17304.

A 304.

THE COURT: That is 500 numbers here than what you are talking about. Now let's get at this without any unnecessary confusion.

Is there anything in that box for July or August that goes down as low as 16800?

THE WITNESS: Not that I can see, sir. Let me check this pack. It is also July 1st. Let me take a quick look. I see no 168 anything there on the 1st of July. I don't see any, sir.

Q I am sorry, do you have any slips for the month of June at all, in that group?

A No, I don't, sir. They are July.

Q In that group you have only slips for July and August?

A That is correct.

Q Were you shown in the U. S. Attorney's office slips for June also?

A For June there were about three or four slips, sir

Q That is all you had?

A Right. That was all I saw.

Q All right. Now, Mrs. --

THE WITNESS: Excuse me just one minute, sir.

(Pause.)

THE WITNESS: The Judge asked for these and I will give them to him.

THE COURT: Go ahead.

Q Miss Bergman, just a few more questions now. I want to make certain I understand your testimony.

Are you saying that there was no such thing as a blanket slip, for instance, and let me give you an example, if 27 horsemen came from the Monticello Raceway, are you saying the procedure was never used where a man like Mr. Iberger would put his name at the top, he would sign 27 horsemen, without identifying those horsemen, and that would constitute one slip representing 27 horsemen? Are you saying that was never done?

A Sir, if the office called and told me --

Q Can I ask you whether you know whether that was ever done or not?

A Was it done for the horsemen's group or at times?

Q At times.

A Yes, it was when I was instructed to do so, but everyone was told to have slips. If these 27 people went out on the golf course, the starter or the cart man would come in and ask me where the slips were, if they were following Mr. Grossinger's orders, he gave strict orders to write slips.

THE COURT: Did you have to have a slip to tee off at the first tee?

THE WITNESS: Yes, you did. That is why the starter asked.

THE COURT: The starter got one of these four slips?

THE WITNESS: There was a starter's copy and a cartman's copy and that was their job, to get these slips from me and if I was doing my job, I had to write slips. I did my job.

THE COURT: Could anybody tee off at the first tee or tenth tee without a slip?

THE WITNESS: Not during the time the golf course was open. It is possible somebody could sneak out, but they were not supposed to. That is what we were there for.

Q Let me ask you this, Miss Bergman: Do you know of occasions when Mr. Peter Donnelly ran tournaments, if it were a horsemen's affair, where he would simply tell the starter that "these men have been cleared, you can let them have 27 carts or 13 carts" -- if the arrangements had been made in advance, are you saying that never happened or that could not be done?

A It could be done, sir, but each cart would have to be accounted for and each one would have a slip or they were supposed to have a slip.

Q But they could be accounted for in other ways, too?

A That is possible. Anything could be accounted for in any way Mr. Grossinger wanted it. Or the auditing or the cashier's department wanted it.

MR. BLOCK: Your Honor, could I have a minute or so to gather my thoughts?

THE COURT: Yes.

(Pause.)

REDIRECT EXAMINATION

BY MR. BLOCK:

(Pause.)

THE COURT: Go ahead, I didn't know you were waiting for me. Go ahead.

Q Miss Bergman, I show you what has been marked as Government Exhibit 31 for identification. Do you recognize these? Take your time and look through them.

A Yes, I do recognize them.

Q Keep y our voice up so the last juror can hear you.

A Yes, I do recognize them.

Q What are they?

A They are the cashier's green copy of the Grossinger's golf voucher. I wrote them.

Q Do you know when they were written?

A On the 24th of June.

Q Are these the vouchers from June -- the 24th of June of what year?

A 1970.

Q Are these the vouchers for June of 1970 that you saw in the U.S. Attorney's office last week?

A Yes. Excuse me, this one says the 21st. These are the 24th (indicating).

Q According to the numerical sequence, the voucher that says the 21st, would that normally have been issued on the same day as other vouchers dated June 24?

A The numerical sequence substantiates that. It is an incorrect date, but it is on the 24th.

Q Do you recognize the entries that you made on those golf slips?

A Yes, this is Monticello Racetrack, Monticello Racetrack, Monticello Racetrack, and so on.

Q Are they all slips for people from the Monticello Racetrack?

A Yes.

Q Are those slips filledout in the manner in which you testified you filled out slips when there were horsemen's outings from the Monticello Racetrack at Grossinger's?

A That is correct.

MR. FAHRINGER: Objection to leading, if it please your Honor.

THE COURT: Overruled.

Q Had you finished your answer?

THE COURT: She said "That is correct."

Q Miss Bergman, did you, yourself, fill these slips out, each of them?

A Yes.

Q You recognize them how?

A My initials are on it, and my handwriting is on it. I wrote "paid" across here when they paid cash. I did this myself to make sure it wasn't a charge because there is just one thin line here. This I did for my own sake. This is my handwriting and my initials are on all of them.

Q Were these slips prepared by you in the ordinary course of your duties as a Grossinger employee?

A That is correct, sir.

Q It was your duty to prepare such slips?

A Right.

Q Were those slips prepared at or about the time of the transactions referred to by the slips?

A These are at the time of the transaction.

MR. BLOCK: Your Honor, I offer these slips in evidence as Government Exhibit 31.

MR. FAHRINGER: May I see them, please.

(Pause.)

THE COURT: Mr. Block, did you say how many there were?

MR. BLOCK: I didn't, your Honor, but I believe there are seven.

THE COURT: Seven, all right.

VOIR DIRE EXAMINATION

BY MR. FAHRINGER:

Q I take it there would be occasions when individuals would come up from the Monticello Raceway individually and there would be times when there were tournaments or outings, is that correct?

A That is correct, sir.

Q From your experience would this be a situation where -- let's see, there is one person there, is that correct?

A There is two, Mr. Johnson and Mr.Demere. Excuse me, this gentleman may have come with this person, he doesn't necessarily have to be from the track. He could be a friend of this gentleman's, they came together and they gave the name the Monticello Raceway.

THE COURT: The slip was for two?

THE WITNESS: Right.

THE COURT: And they gave you the name of Monticello Raceway?

THE WITNESS: Right.

Q This would be for one, is that correct?

A Right.

THE COURT: What is the name on that so we will know what "this" refers to in the record?

THE WITNESS: This is Mr. Boccio, Al Boccio.

Q This one would be for one, is that correct?

A Yes, that is Mr. George Gilmore, he took a cart, right.

Q This one would be for one?

A That is correct.

Q This one would be for one?

A Right.

Q And this one would be for one. When I say "this one," I am referring to each part of the exhibit that has been identified as seven slips, is that right?

A That is one slip, sir, but it is two parts.

Q I am sorry, I didn't see that.

THE COURT: What is the number of that slip?

THE WITNESS: 16139. These are two carts, it would be a party of four or one person could be riding a card, it could be th.ee.

Q You have no way of knowing that?

A No.

Q Two people each could have taken one cart apiece?

A Yes, or one could be riding in one cart and so on.

Q This is signed by a Mr. Stevens.

A Right. That is Arthur Stevens.

Q Incidentally, do you know whether -- can you tell from those slips, whether the people went out? Did they go out all at the same time or is it possible that they would have gone out at different times during the day?

A Sir, these slips seem to follow. They start at 16138, 16139, 16140, 16141 and for some reason other people went out.

Q Guests?

A Somebody went out, 16147, 16148 and 16153. Relatively close, but they didn't all go out together.

Q Some other foursomes would have gone out in between them?

A Right.

Q That would indicate that gorup, those seven slips, did not all arrive at once and go out in one group, is that what that would indicate to you?

A They could have arrived at once, but they didn't go out in one group.

Q They didn't go out and all play together in sequence or in foursomes?

A They could have waited for each other.

Q Would you say, relying on your experience, that if the numbers ran sequentially, if eight people came out to play golf and they were going to play in two foursomes and

they used eight slips, would ordinarily those slips be all written together when they came in and signed up?

A Right. I would say that.

Q If there was a break of, say, 15 numbers there, 15 slips in between, would thatindicate to you from your experience that the likelihood is that maybe the last slip, that fellow came an hour or two later?

MR. BLOCK: Objection,your Honor, beyond the scope of the voir dire.

THE COURT: Sustained. Maybe he was taking breakfast in between.

THE WITNESS: He could be in the locker room or anywhere.

Q He could have come later?

A He could have had lunch, he could have done whatever he wanted.

Q But from the appearance of those slips and the fact that the sequence is broken, that would not appear to be an outing, a golf outing to you, would it?

MR. BLOCK: Objection, your Honor.

THE COURT: I think I will sustain it. I think that the slips speak for themselves.

MR. FAHRINGER: I have no further questions.

THE COURT: The documents are received.

(Government Exhibit 31 was received in evidence.)

BY MR. BLOCK:

Q Miss Bergman, I notice that --

THE COURT: Give the red number down at the bottom and then we will know whatyou are talking about, if you are going to refer to an individual slip.

Q Miss Bergman, I notice that near the bottom of slips 16138, 16139, 16140, 16141, 16147, 16153, there appears in handwriting the word "paid." Is that in your handwriting?

A That certainly is.

Q What is the significance or the meaning of that word on the slip?

A These gentlemen took carts and they paid for them themselves. They handed me the cash for these carts.

Q Were there anyother charges indicated on the slips besides the carts where you wrote "paid"?

A In the other column where the green fee usually is written, underneath 'Monticello Racetrack," there is "N.C." indicated or a blank. I was told to leave that blank and the office would take care of that. These gentlemen paid for their carts and that is what I was told to be concerned with.

THE COURT: What does NC stand for?

THE WITNESS: It would be no charge. They weren't charged or didn't pay for green fees, for whatever reasons.

Q Other than green fees and carts, are there any charges represented by these slips?

A No.

Q Now, in your experience when there was a horsemen's outing from Monticello Raceway, did the drivers or the horsemen pay cash for carts if they rented carts, or did they charge carts, if you recall?

A To the best of my recollection, at this time -- I am sorry, would you repeat that again?

THE COURT: He wants to know whether when the horsemen came to play, did you give them the carts for free or did they pay for them?

MR. FAHRINGER: Could we have the time in 1970, your Honor?

THE COURT: We are talking about in June, July and August of 1970.

THE WITNESS: July and August is what I am familiar with. In June they paid for them. In July and August I didn't see any except for individual people and they paid.

MR. BLOCK: No further questions.

THE COURT: Any further examination?

MR. FAHRINGER: May I, your Honor.

RECROSS-EXAMINATION

BY MR. FAHRINGER:

Q To make sure I understand this --

THE COURT: Mr. Block, do you want to staple them together to have them as one exhibit, 31 stapled together. Put them in numerical sequence.

You can go ahead.

Q Miss Bergman, when there were outings, when the Monticello Raceway had horsemen come up there and play, you are not saying that on the tournament days they had to pay for their carts, are you?

A They did, sir, if they wanted carts.

Q Your testimony is -- your recollection is that whenever they had the golf outings, when a large group of men came from the Monticello Raceway they all had to individually pay for their carts?

A Two people together. Are you referring to the summer of July and August 1970?

Q Of 1970, yes.

A There were no outings, sir.

Q You say there were no outings because you don't

have any records of them?

A Right.

THE COURT: Please, let's not say why she says it. You just ask questions.

Q May I put this question. Isn't it true that you are saying there were no outings in July and August because you can't find any records of any golf slips for horsemen in July and August?

MR. BLOCK: Objection, asked and answered.

THE COURT: I think we have covered that.

MR. FAHRINGER: All right, I have no further questions.

MR. BLOCK: Nothing further, your Honor.

THE COURT: Thank you very much. You may step down. You are excused.

(Witness excused)

MR. KINGHAM: May we have just a moment, your Honor?

THE COURT: Yes.

(Pause)

MR. KINGHAM: Your Honor, the government rests.

THE COURT: All right, ladies and gentlemen, we will give you a short rest now for about ten minutes.

(The jury left the courtroom)

THE COURT: Mr. Fahringer.

MR. FAHRINGER: If it please your Honor, at this time I would most respectfully move for a dismissal of the indictment on the grounds that the prosecution, the government, has failed to prove a prima facie case as a matter of law.

I would also combine with that, if I may, your Honor, a motion for a judgment of acquittal on the evidence that the prosecution has submitted.

Most respectfully, your Honor, addressing myself to, I think, the critical issue here, under the conspiracy count, I don't believe that the government has produced any evidence of a conspiracy.

Admittedly in rather simplistic form I asked each of the alleged co-conspirators whether they at any time in 1970 or 1971, when these transactions took place, whether they combined or agreed with anyone to defraud the Monticello Raceway out of any money and both of them said "No."

I think, since they are government witnesses, your Honor, and there is nothing to dispute their testimony, that that evidence is binding and controlling on the government and under the case law, as I understand

it, your Honor, most respectfully, I would move to dismiss that count of the indictment.

As to the other counts of the indictment, your Honor, I urge that the prosecution has failed to establish a prima facie case. I invite your attention most specifically to the last two counts of the indictment.

If I have the numbers correct, your Honor, the essence of my argument is on the one count where they charge that the letter that was sent asking for a verification of the bill, your Honor, there was absolutely no proof of any kind that would establish that that was with an intent to defraud or was in any wail illegal or nefarious or in any other fashion in violation of the mail fraud statute.

Certainly, your Honor,sending the check for $987 and some cents to pay what was the balance of the bill personally by Mr. Greenberg, I submit, most respectfully, doesn't under any circumstances constitute a villation of the statute.

I don't mean to -- by emphasizing those two counts of the indictment -- I don't mean to stress in any way or suggest that the other counts are sufficient, but, your Honor, as I urged in my original motion filed

with this Court on the very face of the indictment and on the face of the exhibits, the letter asking for a verification of the bill and the check paying the balance that was submitted would seem to me, your Honor, to require a dismissal as a matter of law.

I urge your Honor, without getting into too much detail here, that if the government's contention is that the original two counts of the indictment, that is to say the one that involves the payment of the $4856 by the raceway was ille gal and unlawful under the mail fraud statute, then certainly the $987.09 seems to me cannot be and for all of those reasons and the reasons that I have urged in my motions filed in advance of trial, I would most respectfully urge that the indictment be dismissed.

THE COURT: Is there anything that you want to say, Mr. Kingham?

MR. KINGHAM: Briefly, your Honor, with respect to the conspiracy count, which is count 1 of the indictment, the evidence, I believe, and certainly the inferences drawn from the direct evidence in this case, is that Mr. Greenberg and Mr. Grossinger were in clear agreement as to how these bills were to be handled and that the bar mitzvah was to be billed through

billswhich both Mr. Greenberg and Mr. Grossinger, as the evidence shows, knew were false and were subsequently sent through the mail.

The bar mitzvah was to be billed in that fashion to the racewcy. I believe that the agreement and, therefore, the conspiracy at least prima facie at this point, is made out.

Certainly, I think, there is no quest on as to counts 2 and 3, which refer to the mailing of the bills and the mailing and receipt of the check in payment of the bills.

With respect to count 4, the government's position is on the letter, which Mrs. McCullough prepared and mailed, that, obviously, this is a part of Mr. Greenberg's coverup, an integral part of the coverup in the scheme to defraud.

It gives a normalcy to these transactions, which we contend are fraudulent, and I cite to the Court in that regard the case of United States v. Mirando, which is at 504 F. 2d last year, a Second Circuit case, dealing withthe attempts to give a degree of normalcy to fraudulent transactions after the at least seminal transaction has taken place.

The government makes the exact same

argument with respect to the $987.09 because, obviously, Mr. Greenberg intended that $987.09 to clear up and balance out his account with the Grossinger's,thereby establishing somehow that he had paid the bill for the bar mitzvah in toto when indeed he had only paid $987.09 and the track had paid the rest.

MR. FAHRINGER: Your Honor, I wonder if you would hear me for just another moment.

THE COURT: Yes.

MR. FAHRINGER: I didn't touch upon another argument that Ithink is of some moment here.

No one has really testified here that these events did not take place.

THE COURT: What events?

MR. FAHRINGER: The golf outings.

THE COURT: The last witness made it very clear.

MR. FAHRINGER: Your Honor, I don't want to argue with the Court, but --

THE COURT: I am just taking you at your word. You said, "No one has so testified."

MR. FAHRINGER: Judge, I think what she said is that as far as the records are concerned --

THE COURT: That is tortology. That doesn't

impress me. She made it very clear that there were no such outings during that period of time. If there were, there would be records of them. There are no records of them and the circle is therefore complete so far as her testimony goes.

MR. FAHRINGER: I won't dispute that with your Honor.

THE COURT: All right.

MR. FAHRINGER: But I urge your Honor that at least as far as Mr. Grossinger and Mr. Roth are concerned, certainly they didn't establish that fact. If your Honor is convinced that she has, why I won't press the matter any further with you, but Ithink that is an essential part of this case and that the government is obliged to prove beyond a reasonable doubt that there were no outings.

Mr. Grossinger, for instance, said in his testimony that there were one or two, as I recall, that there were one or two every year.

There is some record of that. But I wanted to add that to the argument that I had already made.

THECOURT: On the facts and circumstances and evidence in this case involving a public corporation

Discussion.

with approximately 5000 shareholders, there is sufficient evidence of the purpose of executing a fraudulent scheme or attempting to do so and a conspiracy so to do.

The motions for dismissal and for an acquittal are both denied with exception to the defendant.

MR. KINGHAM: Thank you, your Honor.

MR. FAHRINGER: May we approach the bench, your Honor?

THE COURT: We are in recess. Do you want to talk to me in chambers?

MR. FAHRINGER: May we, please?

THE COURT: We will take a short recess.

(Recess)

(Jury present)

MR. FAHRINGER: May it please your Honor, I call Mrs. McCullough.

E I L E E N M c C U L L O U G H , called as a witness by the defendant, having been previously sworn, testified as follows:

THE CLERK: You are still under oath.

State your name for the reporter.

THE WITNESS: Eileen McCullough.

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mrs. McCullough, where were you born and raised?

A I was born in Monticello and raised in Monticello.

Q And where did you go to school?

A Monticello, in Mount St. Vincent, New York.

Q Are you a college graduate?

A Yes, I am.

Q Will you tell us when you began to work for the Monticello Raceway?

A During my, between my junior and senior year in college, I worked the switchboard.

Q And then when did you begin to work full time?

A After my graduation.

Q When did you become Mr. Greenberg's secretary?

A In '61.

Q And you are married?

A Yes, I am.

Q What does your husband do?

A He's a starting judge over at the meadows, Meadowlands, Pennsylvania.

THE COURT: Meadowlands what?

THE WITNESS: Pennsylvania.

THE COURT: Starting judge, you mean a racetrack starter?

THE WITNESS: Of a racetrack, right.

Q Incidentally, were you with him in that location in Pennsylvania before coming back here to work at the racetrack?

A Yes, I was.

Q I was asking you about the system of arranging for horsemen's outings, and particularly I'd like to direct your attention to 1970, July and August of those two years.

Will you tell us, please, what the procedure was in terms of setting up an outing?

A Well, the sheets were posted in the racing office; horsemen would sign up. Sheets would be delivered over to the main building, the administrative office.

Q Tell us where the racing secretary's building is?

A It's between the practice track and the main track, there is a building, it's a separate building, separate from t he grandstand.

Q Is there a large room in there called the entry room?

A Yes, that is where the horsemen pick up their mail and their papers and they have a big bulletin board that has any notices or anything of importance.

Q Is that kind of like the horsemen's head-quarters?

A Oh, yes, definitely.

Q I show you Defendant's Exhibits marked J, K, L, M, N, O, P, Q and R, and I ask you whether you recognize what is shown in those photographs.

A This is the entry room, ye , where the overnight sheets were kept. This is the classification board for the horses.

THE COURT: When you lower your voice, they can't hear back there. Will you start again, please.

THE WITNESS: I'm sorry. Yes.

A This is where entry sheets, where the horsemen, overnight sheets, would be kept, here.

Q Would you identify them each time you refer to them by the letter, please.

A That is J, Exhibit J.

K is the classification board.

L is an entry way, telephone booth and classification board.

This is basically where -- M is where the overnight sheets were.

N is another view of the room.

O is still another room, view of the room, with the overnight sheets.

P is another view of the same room.

Q is another view, with the bulletin board.

And R has the bulletin board.

Q Now, can you tell us, by looking at those photographs, and I invite you to pick the one that would show the bulletin board, show us where the sheets that you have described that the horsemen would sign up on would be posted.

MR KINGHAM: Objection. Not in evidence.

MR. FAHRINGER: I will offer them, your Honor.

MR. KINGHAM: May I see them, please?

(Pause.)

MR. KINGHAM: Voir dire, your Honor.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KINGHAM:

Q Mrs. McCullough, you didn't take these pictures did you?

A No, sir.

Q Do you know when these pictures were taken?

A No, sir.

Q Do you know whether these were taken in 1970?

A The room looks the same.

Q That was my next question. Do these pictures that you have identified as Exhibits J through R accurately reflect the condition of this area as it appeared in the summer of 1970?

A Yes.

Q Now, with respect to J, Mrs. McCullough, that is where entry sheets are kept, is that correct?

A Yes, on the bottom here.

Q Indicating an area there?

A Right.

Q And on which of these pictures appears the bulletin board about which you testified?

A Q and R.

MR KINGHAM: No objection to Q, your Honor.

(Defendant's Exhibit Q was received in evidence.)

MR. KINGHAM: Objection to J through P on relevance, and R as cumulative.

THE COURT: Do you need these, Mr.Fahringer? YOu feel you need these?.

MR. FAHRINGER: Well, just to show the whole room, your Honor.

THE COURT: I know, we could show a lot of rooms. Do you feel you need them for this case?

MR. FAHRINGER: Yes, I do, Judge.

THE COURT: All right, received.

(Defendant's Exhibits J through P and R were received in evidence.)

BY MR. FAHRINGER:

Q Mrs. McCullough, examining all the pictures now, does that show the whole area where the horsemen assembled?

A Yes, this is the same room where they had come in, and this was an assembly room for them, yes.

Q Would they have often met there and hung out there?

A Oh, yes, everybody went there, all the horsemen.

Q You have indicated on-- please let me ask you again, which exhibit shows the bulletin board where the --

THE COURT: Q and R.

A Q and R.

Q Do you know what time that would be posted?

A What would be posted?

Q The list for the men to sign on?

A It would be posted in the morning, probably about 8:30.

Q And when would it be taken down?

A Late morning, about 11:00, 11:30.

Q All right. And tell us again, it would be brought up to the administration building and then whose office would it be placed in?

A The publicity and promotional office.

Q Let me show you what was marked for identification as Defendant's Exhibit T. Is that one of the sheets in 1970 that was posted on the bulletin board?

MR. KINGHAM: Objection.

THE COURT: That objection is sustained.

Can you identify that sheet according to year, month and day in any way?

THE WITNESS: Yes, I can.

THE COURT: When was that sheet prepared as far as you can tell from your practice?

THE WITNESS: I can tell -- well, it has a voucher attached to it.

THE COURT: I am not talking about when you paid it. I am talking about when the sheet was prepared. Was it January 1970 or was it February or March or April?

THE WITNESS: It has a date on it, 7/29/70.

THE COURT: 7/29/70.

Q Now, do you recognize, Mrs. McCullough, at the --

MR. FAHRINGER: Excuse me, your Honor, I would offer this in evidence.

MR. KINGHAM: Objection.

THE COURT: The only two dates in July that

we have heard about thus far, Mr. Fahringer, are July 8th and July 22nd, and this is not either of those.

MR. FAHRINGER: It is to show procedure, your Honor.

THE COURT: Procedure?

MR. FAHRINGER: Yes.

THE COURT: I think that you have the procedure sufficiently, but that doesn't make this evidence.

And the procedure here, this has to do with the Laurels Country Club. It hasn't even got to do with this particular thing.

Sustained.

Q Mrs. McCullough, let me ask you this question: Once the sheets were completed and the affair took place, what was done with these attendance sheets that were, for instance, used for the Grossinger's outings?

A With those sheets?

Q Yes.

A I would assume --

MR. KINGHAM: Objection, your Honor.

THE COURT: You cannot assume. You either know or you don't know personally.

THE WITNESS: Personally?

THE COURT: Yes.

Q May I ask you this: From your knowledge of the procedures, were they retained for any period of time at all?

MR. KINGHAM: Objection.

THE COURT: I will let her answer it.

A Yes, they would have to be.

Q What governed that period of retention. Tell us if youwill, please, what the procedure was in terms of retaining them.

A They would have to be retained because that was an attendance count.

Q Then when would they be destroyed ordinarily?

A After we would get a bill for it.

Q In other words,you would keep them until you got a bill from the hotel, when you got the bill there was no longer any need for the attendance sheet?

MR. KINGHAM: Objection, your Honor.

THE COURT: That is a conclusory form, but I will allow it to be answered. I don't think that you ought to lead this witness. You ought to ask her what the procedure is instead of telling her.

MR. FAHRINGER: Right, your Honor.

THE COURT: Is that right?

THE WITNESS: Pardon me.

THE COURT: After you paid them, they were disposed of?

THE WITNESS: Yes.

THE COURT: All right.

Q Without referring to the content of this exhibit, the one that has been identified as Exhibit T, can you tell us why that one has been retained?

MR. KINGHAM: Objection.

THE COURT: Overruled.

Of your own knowledge, please.

A Well, of my own knowledge, first of all, the Laurels Country Club where they were playing was not a

regular golf course. It was more like a putting green and the horsemen usually when they went for lunch --

THE COURT: What has that got to do with why you retained that?

THE WITNESS: Why we retained this?

THE COURT: Yes.

THE WITNESS: Because it was used as a bill.

THE COURT: But the bill was paid and the bill was paid in the middle of 1970. Now Mr. Fahringer wants to know why you happened to keep this particular sheet for the last five years.

THE WITNESS: This was submitted as the bill.

THE COURT: Yes.

THE WITNESS: From the Laurels Country Club.

THE COURT: Is that the reason why you retained it?

THE WITNESS: Yes, it has got the auditing committee's okay on it, so that would have to be the bill.

THE COURT: If it had the auditing committee's okay on it, it would be retained in the files of the Raceway, is that it?

THE WITNESS: Oh,yes.

THE COURT: If it didn't have the auditing committee's information it or authorization, it wouldn't be

retained, is that what you mean?

THE WITNESS: Yes,your Honor.

Q Also, Mrs. McCullough, that attendance slip there, was that endorsed as a bill by the Laurels pro, did he make that the bill?

A This is made the bill, yes.

Q In other words, he tookthe attendance sheet, he put the total coston it --

MR. KINGHAM: I object, your Honor.

THE COURT: Yes.

Q Will you tell us what he did with that?

MR. KINGHAM: I object to that.

THE COURT: Sustained.

Q Do you know of your own knowledge, Mrs. McCullough, whether Defendant's Exhibit T was made into a bill by Mr. Caruso?

MR. KINGHAM: Objection.

THE COURT: Do you know what Mr.Caruso did about this?

THE WITNESS: What he did about it?

THE COURT: Yes.

THE WITNESS: I can only tell you from what is in front of me.

THE COURT: Objection sustained.

Q Did there come a time, Mrs. McCullough, in September of 1970 that you recall an incident where Mr. Greenberg spoke to you about these attendance sheets?

MR. KINGHAM: Objection.

THE COURT: Overruled.

A Pardon me?

MR. FAHRINGER: It was overruled. You may speak.

Q Tell us what happened.

A I couldn't exactly say it was definitely September but I do know Mr. Greenberg asked me for those sheets.

Q Was he speaking on the phone at the time, if you know?

MR. KINGHAM: Objection, your Honor.

I will withdraw that objection.

Q What was he doing?

A Well, he was in a hurry to see the sheets and I told him I didn't have them. He asked where --

MR. KINGHAM: Objection. Hearsay.

THE COURT: I will take this conversation.

He asked for them. You said you didn't have them and then what happened?

THE WITNESS: I told him to check with the publicity office and promotional office to see if they knew

where they were.

Q What did he do?

A He went down and he checked with somebody because he came back with something.

Q You don't know what he came back with?

A But he had something in his hand, yes.

Q Is your office right outside of Mr. Greenberg's office at the Monticello Raceway?

A Yes, it is.

Q In other words, he can step out and your desk is located right next to his office?

A Yes, it is.

Q In that instant that you have just described to us, did he come out of the office and speak to you?

A Did he come out and speak to me? Yes, he did.

Q Now, Mrs. McCullough, did you in 1970 when you were working as Mr. Greenberg's secretary, did you on occasion prepare checks for him?

A Oh, yes.

Q I am talking about personal checks also.

A Yes, sir.

Q Would you tellus what that procedure would be?

A He would put a bill on my desk and tell me to pay it and I would write out the check.

Q That would be on his personal account?

A Yes, sir, I handled his personal account.

Q I show you Defendant's Exhibits G, C, D, I and H, and I ask you whether you recognize each of those documents?

A They are bills, yes. Liberty Bell Baking Company; Allen, Inc. -- do you want me to read the exhibit number on them?

Q Yes, would you identify them by exhibit number.

A Sorry. G is Liberty Bell Baking. C is Allen, Inc.

D is Charles Gips.

H is Allen, Inc.

I believe this is I, Danny Leroy Orchestra.

Q Do you recall those documents?

A These are documents -- they are bills that have to do with --

MR. KINGHAM: Objection.

THE COURT: He just wants to know do you recall them?

THE WITNESS: Yes, I do.

Q Do you recall paying those bills for Mr. Greenberg?

MR. KINGHAM: Objection.

THE COURT: Overruled.

A A couple of them I could have paid, yes.

Q Do you know whether you did or not?

THE COURT: Strike out the answer. That is not a response to the question.

THE WITNESS: I could not say I definitely paid -- that I definitely wrote these checks out. No, I could not say that.

Q Let me ask you this: Do any of those bills contain your handwriting?

A This doesn't.

MR. KINGHAM: May we have reference to the numbers please.

Q C.

THE COURT: Never mind the ones that don't. Do any of them and give us the number?

THE WITNESS No.

Q Do you know whose handwriting that is that is marked on there "paid"?

A Yes, Loretta Kratz.

Q I will ask you this: Do you know of your own knowledge whether you issued the checks covering those bills?

THE COURT: She just got through saying that she can't say that.

MR. FAHRINGER: I am sorry, your Honor.

Q You cannot tell us that?

A No, I cannot tell you that.

MR. FAHRINGER: Could I have these marked?

THE COURT: Give them to Mr. Fahringer and let him mark them himself.

MR. FAHRINGER: The last one I have is U.

Q I now show you Defendant's Exhibits AA, BB and CC and I ask you whether you can identify what those appear to be.

A They are checks. First Exhibit AA made out to Allen, Inc. in the sum of $1523 --

MR. KINGHAM: Objection, your Honor, to the contents.

THE COURT: They are checks. That is enough. Next question.

Q Did you draw those checks?

A It is possible.

THE COURT: Strike out the answer.

Q You don't know whether you did or not?

A They are typewritten.

Q Is there any way you would know --

A I would say I did.

Q What is that based upon?

A I always typed out checks.

Q In 1970 you were Mr. Greenberg's secretary?

A Yes.

Q That is what you normally did?

A Yes. It is how I would type them.

MR. FAHRINGER: I will offer these.

I have one more here, U.

Q Can you identify that also as one of the checks that you drew in 1970?

A Yes.

MR. KINGHAM: May I inquire, your Honor, on the voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KINGHAM:

Q Mrs. McCullough, you have mentioned a woman named Loretta Kratz.

A That's right.

Q Loretta Kratz was also a secretary at Monticello Raceway, was she not?

A Yes, she was.

Q At times she would type things for Mr. Greenberg, isn't that correct?

A That is correct.

Q You don't know as you sit here under oath, Mrs. McCullough, whether you typed these checks or Loretta Kratz typed these checks, do you?

A I would say that I typed them.

Q What causes you to say that you typed them?

A Because Loretta often worked with me in things. Like when I would be doing work like typing

checks, she would help me, she would mark bills for me. It was a part of our way of doing things.

Q So it is quite possible that Loretta Kratz typed these checks as well as it is possible that you typed these checks, isn't that true?

A No, not really because Mr. Greenberg did not like too many people handling his personal affairs, his personal checking. She would do letters and things like that, but as far as typing checks and his personal affairs, I handled them.

Q Can you, as you sit here today,say that Loretta Kratz never typed a check for MR. Greenberg?

A I could not say that, no.

Q You can't really say, as you sit there today, that you of your own knowledge know today that you typed these checks, can you?

A That I definitely typed them?

Q That is right, that you typed these checks? You can't say that, can you?

A Not definitely.

Q There is nothing unusual about the typewriting on this that leads you to believe that it was typed on one typewriter or another at the raceway, is there?

A No, not by the type.

Q As a matter of fact, these are copies, are they not?

A Yes, sir.

MR. KINGHAM: May I have a moment, your Honor.

THE COURT: How do you know they are copies?

THE WITNESS: They are not originals.

THE COURT: How do you know that everything that was on the original is on these papers?

Is there anything that tells you that everything that was onthe originals is on these papers?

THE WITNESS: You mean on this check itself?

THE COURT: Yes.

THE WITNESS: This is Mr. Greenberg's -- it looks like one ofhis checks. It has a date on it and it is filled out.

THE COURT: Somebody took a picture of something, didn't they?

THE WITNESS: This is a picture, yes, sir.

THE COURT: You have no way of knowing whether this is a true picture or not, have you?

You don't remember the check itself, you said that?

THE WITNESS: No, I don't.

Q Do you know where the originals of those checks are?

A Where they are?

Q Yes.

A No, sir.

THE COURT: When did you see the originals last?

THE WITNESS: I really don't remember.

THE COURT: Did you balance Mr. Greenberg's checkbook at the end of the month against the vouchers?

THE WITNESS: I always balanced his checkbook, yes.

THE COURT: What did you do with the cancelled checks as they came in?

THE WITNESS: Well I would file them.

THE COURT: File them where?

THE WITNESS: Well, with his other checks or, you know, in his regular checking account.

THE COURT: Was there a regular file for that?

THE WITNESS: Well, more or less.

THE COURT: Those files were retained, weren't they?

THE WITNESS: Yes, sir.

THE COURT: When did you last see those files?

THE WITNESS: I last saw his checking files this year.

MR. KINGHAM: Objection, your Honor, foundation, best evidence rule.

THE COURT: They may remain marked for identification for the moment.

MR. FAHRINGER: I have no further questions of this witness, your Honor.

THE COURT: Any cross-examination, Mr. Kingham?

MR. KINGHAM: Just briefly, your Honor.

CROSS-EXAMINATION

BY MR. KINGHAM:

Q Mrs. McCullough, earlier today, I don't recall, how long was it that you said you had been Mr. Greenberg's secretary?

A Since 1961.

Q You had worked at the track previous to that, is that not correct, or is that when you first started?

A No, I started out on the switchboards when

I was in college.

Q That was before 1961?

A Yes, sir.

Q When you were at Mount St. Vincent, is that right?

A Yes.

Q So you have known Mr. Greenberg since when, about 1958?

A The year I fiest started working there, yes, sir.

Q Was that about 1958?

A '59, I believe.

Q During the course of your employment at the raceway, say from 1958 -- I am sorry, 1959 until 1974, by the way is 1974 when you stopped being Mr. Greenberg's secretary?

A Yes, sir.

Q During that time you came to know his family, did you not?

A Yes, sir.

Q And indeed you formed an attachment to his family and particularly his sons, did you not?

A Yes, sir.

MR. KINGHAM: I have no further questions

of Mrs.McCullough, your Honor.

THE COURT: Anything else, Mr. Fahringer?

MR. FAHRINGER: No, your Honor.

THE COURT: Thank you, you may step down.

MR. KINGHAM: Thank you, Mrs. McCullough.

(Witness excused)

MR. FAHRINGER: If it please your Honor, I have no further witnesses for today.

THE COURT: There is no need to repeat what I told you in chambers. There is no need to repeat it in this forum.

It might create the unfortunate circumstances of lengthening the week. I just call that to your attention.

We will take a recess at this time, ladies and gentlemen, until tomorrow morning at 10 o'clock.

(Jury left the courtroom)

THE COURT: Mr. Fahringer, I am distressed that you have not prepared your case so as to go forward with the defendant's case as required upon the conclusion of the government's case. I frankly think that there is no -- certainly no legal excuse and I don't put it on that ground. I don't think that there is any excuse as a matter of trial preparation

Adjourned.

for this breakdown in your preparation and any arrangements that you have made without the knowledge of the Court for the progress of this case were inappropriate and unauthorized and I am merely suggesting to you that there will be no further continuances based upon any delays caused by your own desires for the timetable.

Now, I expect to go forward with a full day tomorrow and depending upon how we go, we may go into Saturday.

I give you that information because you told me that you had hoped to get back to Buffalo and I had hoped to be able to get you back to Buffalo, but not on the basis of half-day sessions in the courtroom.

We are now in recess until tomorrow morning.

(Adjourned to November 7, 1975, at 10 a.m.)

UNITED STATES OF AMERICA

vs. 75 Cr. 1010

LEON GREENBERG

November 7, 1975
10:10 a.m.

Trial resumed.

- - -

(In open court; jury present)

MR. FAHRINGER: May it pleaes your Honor, Judge Werker, please.

MR. KINGHAM: Your Honor, may I sent up a note?

THE COURT: Yes.

H E N R Y F. W E R K E R , called as a witness by the defendant, being first duly sworn, testified as follows:

MR. KINGHAM: Your Honor, may I send up a

note before questioning?

THE COURT: Yes.

(Pause)

THE COURT: This will be marked Court's Exhibit 1.

You may proceed, Mr. Fahringer.

(Court's Exhibit 1 marked.)

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Judge Werker, what is your occupation?

THE COURT: There is only one judge in this courtroom at the present time, and I'm sure that Mr. Werker appreciates that.

MR. FAHRINGER: All right, your Honor.

Q Mr. Werker, what is your occupation?

A I'm a U. S. District Judge.

Q And where do you sit?

A In Foley Square, in the Southern District.

Q In this very building?

A Yes.

Q And what courtroom have you been occuping this week?

A Room 518.

Q Right across the hall?

A Yes.

Q May I ask you about your background, Mr. Werker; where were you born and raised?

A I was born and raised in Glendale, Long Island, which is a part of Queens County in New York City.

Q Where were you educated?

A Educated at the New York University, Washington Square College and Law School.

Q May I ask you when you were admitted to the bar?

A I was admitted to the bar in 1946.

Q And after that, did you engage in the practice of law?

A I was in private practice of law in the City of New York until 1958.

Q And after that, where did you practice?

A I then practiced in Catskill in Greene County, New York.

Q Is that in the area of Monticello, New York?

A It's approximately 100 miles away from Monticello, but it's within the third judicial district which is a district in the State of New York.

Q Were you in the service, Mr. Werker?

A Yes, I was. I was in the Navy, in the Naval Reserve. I'm a retired lieutenant commander.

Q And did there come a time when you assumed public office?

A Yes, there did come a time.

Q Will you tell us about it?

A In 1967 I was appointed an assistant county attorney in the County of Greene and also the social services attorney.

In 1969 I was appointed the county judge, surrogate and family court judge in Greene County.

And in the following year I was elected for a term of ten years in Greene County.

Q When did you become a United States District Judge?

A In September of 1974.

Q How long have you known Leon Greenberg?

A Approximately seven or eight years.

Q During that period of time have you had the occasion to speak to other persons who know Leon Greenberg?

A Yes, I have.

Q And as a result of speaking with those persons have you been able to form an opinion as to

what his reputation is in his community for truth and honesty?

A Yes.

Q What is that reputation?

A His reputation is excellent.

MR. FAHRINGER: You may ask.

CROSS-EXAMINATION

BY MR. KINGHAM:

Q Mr. Werker, you don't know anything at all about the facts of this particular case, do you?

A Nothing.

MR. KINGHAM: Thank you very much.

No further questions, your Honor.

THE COURT: I think it would be appropriate for the record to show that you are not appearing here voluntarily.

THE WITNESS: I'm appearing here under subpoena issued by Mr.Fahringer.

THE COURT: You may be excused.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: In explanation of Court's Exhibit 1, I would like to send this down to both counsel.

MR. FAHRINGER: Mr. Donnelly, would you

take the witness stand, please.

P E T E R  D O N N E L L Y , 541 Minorca Avenue, Coral Gables, Florida, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mr. Donnelly, what is your present occupation?

A I'm a golf professional at Costa del Sol Golf & Record Club.

Q How long have you been located there?

A Just short of two years, it will be two years next month.

Q May I ask you where you were raised?

A I was born and raised in White Plains, New York.

Q And educated in this area?

A Yes, I was.

Q After you were graduated from school, what did you commence doing?

A When I graduated high school I went a year to private school, to see what I wanted to do for a future and I turned professional in golf after that.

Q Now, are you a qualified professional?

A Yes, I'm a class A member of the PGA.

Q And hwo long have you held that position?

A Class A since 1965, and I was a junior A since 1962.

Q Now, did there come a time when you were employed by the Grossinger's Resort Hotel as a golf professional?

A Yes, from 1970 to 1973, four years.

Q Will you tell us how it came about that you were employed at Grossinger's?

A Well, I was contacted by Mr. Paul Grossinger from a recommendation from one of my previous employers, and I was interviewed by Mr. Grossinger for the job, and through several meetings and everything we agreed that I would be the head professional in 1970.

Q As a head professional at the Grossinger's, what were your responsibilities?

A To maintain and operate the golf operation, to oversee everything that had to do with it, to teach, give lessons, to run the golf shop, just general overall control of the golf operation.

Q When you were there, was there any other golf professionals?

A Yes, there was a person by the name of Al Besselink who was more or less a host professional, he was there on public raltions and I also had an assistant, who taught with me.

Q Now, incidentally, how long was Mr. Besselink there?

A He was there, he came in 1970 and left 1970.

Q He was only there the one year?

A Yes.

Q In 1970 that would have been your first year as golf professional at Grossinger's?

A Right.

Q Do you recall horsemen's outings being held there that were sponsored by the Monticello Raceway?

A Yes, I do.

Q Can you tell us from your own recollection approximately how many were held, I'm talking about -- strike that.

Golf outings would include ordinarily how many people?

A I would say in the neighborhood of 20 to 40 players.

Q And how many of those golf outings do you recall, in 1970, during the summer?

A Usually it seemed like there were about two a month, I'd say five, six, seven of them, during the year.

Q And will you tell us what the procedure was in terms of registering these players when they would come in to participate in golf?

A All right. They would come in and usually they would have lunch and they would register with the maitre d' to have lunch, they would sign a list. We would be given a list in the golf shop by Mr. Iberger, you know the list of players that would be going to play, and then they would either register one of two ways: They would have, they would each sign individually or we would have a blanket slip, and this would be given to the starter and they would be given their carts.

Q What do you mean by a blanket slip?

A A blanket slip would be where we would have a list of the players that were going to be coming, and they would register, they would check off their names as they came in, and one ticket would be made up with how many horsemen were there, and it would be signed by Mr. Iberger.

Q I show you Defendant's Exhibit V, marked for identification, and I ask you whether you recognize that.

A This would be a slip -- this is right here a blanket slip where we had --

MR. KINGHAM: Objection.

A Where we would have --

MR. KINGHAM: Objection.

THE COURT: He just asked you whether you recognize it.

THE WITNESS: Yes.

Q What is that?

A This is a blanket slip.

Q Incidentally, does the name Paula appear on that slip?

A Yes, as clerk.

Q All right. And was there a Paul working there in 1973?

A Yes.

Q Would that indicate to you that that slip --

THE COURT: Is that 1973 you say?

MR. FAHRINGER: 1973, your Honor.

Q Would that indicate --

THE COURT: I thought you were questioning this witness about 1970.

Q Well, in 1970 were these blanket slips made up?

A Yes.

Q And that exhibit that you have in front of you is a photocopy, a Xerox copy, isn't it?

A Yes, it is.

Q Does that fairly and accurately represent, as you recall, what a blanket slip would look like?

A Yes, it does.

Q Does it have a number, just a number of horsemen on there?

A It has 13 carts which would indicate probably 26 players, because there are two to a cart.

Q And then a total charge?

A Yes.

Q Do any horsemen's names appear on that slip?

A No.

MR. FAHRINGER: I will offer this in evidence, your Honor.

MR. KINGHAM: May I inquire on the voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KINGHAM:

Q Mr. Donnelly, this or the original of that slip was not prepared in the year 1970, was it?

A No, it wasn't. Prepared in 1973.

Q It would appear to have been prepared in May of 1973, isn't that right?

A Yes, sir.

Q You were not present, were you, when that slip was prepared, if you know?

A I don't really remember if I was present. I would say I was there, not maybe right over the top of the person who was writing this, but I was there.

Q Without looking at that document, do you, of your own knowledge, recall that that slip was prepared on that date?

A Well, if we had an outing, there would have to be some slip or slips made.

Q But do you of your own knowledge as you sit here today recall that that particular slip was made on May 23, 1973?

A No.

MR. KINGHAM: Objection, your Honor.and on relevance.

MR. FAHRINGER: May I inquire again, your Honor, on the offer.

THE COURT: Yes.

BY MR. FAHRINGER:

Q Mr. Donnelly, let me just ask you, was Paula Bergman, did she work under your supervision?

A Yes, she did.

Q Were the people in the pro shop all responsible to you?

A Yes, they were.

Q And the document that you have in front of you, Defendant's Exhibit V marked for identification, from your recollection, is that exactly what a blanket slip would appear like that was made in 1970 also?

A Yes,it would.

Q Were they always made up essentially the same way?

A Yes.

MR. FAHRINGER: I renew my offer,your Honor.

MR. KINGHAM: Same objection.

THE COURT: I will look at the slip.

MR. KINGHAM: May I renew my inquiry on the

voir dire,your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KINGHAM:

Q Mr. Donnelly, with respect to the document, you have testified, have you not, that such documents were prepared in 1970, is that your testimony also?

A Yes, these things happened also in 1970.

Q Now, you worked there for how many seasons?

A Four.

Q So that would be '70, '71, '72 and '73?

A That's correct.

Q The document that you have been shown appears to have been made in the last of your four seasons, is that correct?

A That's correct.

Q 1970 was your first season there?

A That's correct.

Q Do you recall of your own knowledge, as you sit here today under oath, and can you swear that a document such as that was prepared in 1970?

A Yes.

Q Do you know when such a document was prepared in 1970?

A During one of the outings.

Q And if there were such a document prepared, where would the record be kept?

A The procedure would be, as far as to my knowledge, this would be something different than most anything handled because 99 per cent of our --

THE COURT: Just tell what the procedure is to your knowledge. Don't help us in any other direction. What is the procedure?

THE WITNESS: The procedure would be that at the end of the day the tickets would be brought down to the cashier and if it was cash or charge, it would be handed to her. If it wasn't, a cash or charge --

THE COURT: What ticket would be borught down?

THE WITNESS: All tickets, all receipts, like that, a copy of that.

THE COURT: Is this an item that is taken off the machine in numerical sequence up there?

THE WITNESS: Yes.

THE COURT: Was this part of the quadruplicate item?

THE WITNESS: Yes, that slip there, yes.

THE COURT: And this is the guest copy?

THE WITNESS: That particular one is.

THE COURT: It is a guest copy. So what you did, even if you had a horsemen's outing, that it went through the machine, a pink copy stayed in the machine?

THE WITNESS: That is correct.

THE COURT: A green copy went to the cashier?

THE WITNESS: Right.

THE COURT: A white copy.

THE WITNESS: Went to the guest.

THE COURT: Went to the guest.

THE WITNESS: And a yellow copy went to the starter.

THE COURT: Yellow copy went to the starter, so this is only one of four items of the quadruplicate in the machine?

THE WITNESS: That is correct.

THE COURT: This has a number on it and they are all prenumbered?

THE WITNESS: That is correct.

THE COURT: And they are all numbered in sequence?

THE WITNESS: That is correct.

THE COURT: And they are taken out of the machine?

THE WITNESS: Numerically.

THE COURT: Numerically and the procedure was

the same, whether it was a guest who showed up or a horseman who showed up?

THE WITNESS: That is correct.

THE COURT: Well, it seems to me that this is the same as the green slips already in evidence. What can be the objection to it?

MR. KINGHAM: 1973, your Honor.

THE COURT: Well, it may be in 1973, and we are interested in 1970, but it is being offered here as a sample of a situation where 13 people signed up instead of one, two or three, and the witness has testified that these things were prepared in numerical sequence, whether they were horsemen or guests or anybody else.

MR. KINGHAM: Indeed.

THE COURT: I will allow it as a sample.

MR. KINGHAM: Thank you, your Honor.

THE COURT: The only thing is this happens to be a guest copy. The green copy there is a cashier's copy. Have we got a sample of a guest copy, the color of a guest copy?

MR. KINGHAM: I believe that is the yellow,from the testimony, your Honor.

THE COURT: Yellow. Have we got one of those so we have a true sample?

Well, we won't detain on that. The jury will understand that this is being offered as a sample, and it is one of the four manifold copies that are prepared in those circumstances.

It is received only as a sample.

(Defendant's Exhibit V was received in evidence.)

BY MR. FAHRINGER:

Q Mr. Donnelly, when a blanket slip was made up in 1970, may I ask you, in terms of -- there was testimony the other day about the slip you give to the starter and to get a cart, how would that be handled if there was a blanket slip for some 26 men?

A We would have a list of the players previous to their going out. I would have a list, the starter would have a list. He would then check them off and then be given a slip to coincide with the players that he has checked off, and that must match.

Q In that situation each player would not have an individual slip to give to the starter?

A That is correct.

Q Now, in terms of record keeping, you indicated that most of your business involved either cash or charging to rooms, is that correct?

A That's correct.

Q All right. So this situation would be different from that?

A That is correct. This would be billed.

Q In that situation, do you know whether a blanket slip of the kind, of the type that is identified as Defendant's Exhibit V, would be taken to the cashier's office and put in with cash or put in with room charges?

A No, it wouldn't. It would be, I guess, filed in a different situation, to be billed.

MR. KINGHAM: Objection to the answer.

THE COURT: Did you have anything to do with the filing?

THE WITNESS: No, sir, I didn't.

THE COURT: Strike out the answer. The jury will disregard the answer.

BY MR. FAHRINGER:

Q Now, Mr. Donnelly, did there come a time this year that you were contacted in Florida by a Mr. Jack Cossolini?

A Yes, there was.

Q Did he identify himself as an investigator?

A Yes, he did.

Q Did he indicate to you --

MR. KINGHAM: Objection, your Honor.

THE COURT: I don't think that the arrangements between this witness and the man that you mentioned are of any significance here, and would represent hearsay in all events.

Sustained.

Q Did he simply indicate he wanted --

MR. KINGHAM: Objection, your Honor.

THE COURT: Sustained.

Q After that contact, did you call Mr. Grossinger?

A Yes, I did.

Q Is that Paul Grossinger?

A Yes, sir, i did.

Q Did you speak to him?

A Yes, I did.

Q Did you indicate to him that you had been

contacted --

MR. KINGHAM: Objection.

THE COURT: Overruled.

Q Did you indicate to him you had been contacted?

A Yes, I did.

Q And that information was being sought from you?

A Yes, I did.

Q Will you tell us what you said to him and what he said to you?

MR. KINGHAM: Objection.

THE COURT: I will take this subject to a motion to strike out in the event that it is improperly brought out.

MR. KINGHAM: Thank you, your Honor.

Q Will you tell us what you said to him and what he said to you?

A I told him that I was contacted by a private investigator pertaining to the golf outings that we had at Grossinger's and he had told me, "Just tell them exactly 100 per cent the truth."

Q Did you indicate to him at that time that you had --

MR. KINGHAM: Objection to form.

THE COURT: I think the witness should testify

what occurred without suggestion.

Q Did you say anything to him about what you had told the in.estigator?

A I told him that I was notified by the investigator about the situation that was going on, and he, being my past employer, and a personal friend, I did ask him, you know, in relation to the golf tournaments that we had with the Monticello Raceway, and he agreed, you know, that we had these tournaments and that "just tell them the truth," that's all.

MR. FAHRINGER: I have no further questions.

MR. KINGHAM: Motion to strike, your Honor.

THE COURT: I will wait until the conclusion of the cross-examination to decide that.

MR. KINGHAM: May I have a moment.

THE COURT: Yes.

(Pause.)

CROSS-EXAMINATION

BY MR. KINGHAM:

Q Mr. Donnelly, you mentioned before during the voir dire, that is when I was questioning you about that exhibit, that when the golfers would come from the track to play at Grossinger's, there was a slip, a blanket slip or slips prepared, isn't that correct?

A Yes, sir.

Q And so would it be fair to say that when the golfers would come to play sometimes a blanket slip would be prepared and sometimes there would be individual slips for the carts, isn't that correct?

A That is correct.

Q And indeed on the cart slips, there is sort of an insurance release or something on the bottom for the carts, isn't there?

A That's correct.

Q And the person who would be taking the cart would then sign the insurance release and that is for the hotel's purpose and for the carts, isn't that right?

A Yes.

Q In your experience?

A Yes.

MR. KINGHAM: I don't believe I have any further questions,your Honor, and I renew my motion to strike.

THE COURT: Was there a Horsemen golf tournament on July 8, 1970?

THE WITNESS: I can't remember, honestly remember, the exact day. I know we had them on Wednesdays.

THE COURT: I am not asking you what you do remember, I am asking you the answer to that question.

THE WITNESS: If it was July 8 specifically, I can't answer honestly.

THE COURT: Was there a horsemen tournament on August 12th?

THE WITNESS: The date I can't exactly remember.

THE COURT: Was there one on August 26?

THE WITNESS: I can't say exactly.

THE COURT: Was there one on August 5th?

THE WITNESS: I can't say the exact date.

THE COURT: Was there one on July 22?

THE WITNESS: I cannot answer.

THE COURT: Now, there has been produced here the slips in numerical sequence for all of July and August, including those specific Wednesdays that I questioned you about. Under your procedure would there have been a slip regardless of whether it was 1 or 13 or 26 persons for every one of those days if there was a horsemen's tournament on those days?

THE WITNESS: There would have to be some record one way or another, whether it was one or more.

THE COURT: Is there any further questioning?

REDIRECT EXAMINATION

BY MR. FAHRINGER:

Q You don't know, Mr. Donnelly, whether that

record would ever be sent up to the cashier's office or not, do you?

MR. KINGHAM: Objection,your Honor, asked and answered, sustained earlier.

THE COURT: I will let him ask him what he does know.

Q Do you know whether that special slip, the blanket slip would be sent up to the cashier's office or not?

A I don't know.

MR. FAHRINGER: Thank you.

MR. KINGHAM: Nothing further, your Honor. Thank you.

THE COURT: All right, you may step down.

(Witness excused.)

THE COURT: Any further proof?

MR. FAHRINGER: Yes, your Honor. They are just bringing the witness in.

J A M E S C U R R A N, 512 Prairie Drive, Fern Park, Florida, called as a witness by the defense, being first duly sworn, was examined,and testified as follows:

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mr. Curran, what is your occupation?

A I train and drive harness horses.

Q Are you married, sir?

A Yes.

Q Do you have a family?

A One little girl.

Q And they reside in Florida, I take it?

A Correct.

Q How long have you been training and driving harness racing horses?

A Right around 25 years.

Q Have you raced all over the country?

A I have.

Q Do you hold any records at all?

A I tied the world's record this year in a race a mile 154.4.

Q Now, did there come a time when you began racing at the Monticelllo Raceway?

A I was there the year it opened.

Q Do you remember what year that was?

A Oh, it is the 17th or 18th season. I think the 18th season.

Q It would have been before 1970 then, I take it?

A Oh, yes.

Q And incidentally, in your profession, do you move to different tracks and race at different tracks?

A I do.

Q Are you racing right now some place?

A I am.

Q Where?

A Liberty Bell Park in Philadelphia, Pennsylvania.

Q Now, do you recall in 1970 going to some horsemen's outings at Grossinger's?

A I do.

Q Can you tell us in the year of 1970, the summer of 1970, approximately how many times you recall going over to Grossinger's as a part of a horsemen's outing?

A We went five or six times.

Q Incidentally,will youtell us whether there was a procedure that you signed up for these outings?

A No, the horsemen just showed up.

Q But was there any signing up in the racing secretary's office?

A No.

Q You never did?

A Never did.

Q Do you know whether anybody signed up for you?

MR. KINGHAM: Objection.

THE COURT: Overruled.

Q In any event,you went over there and played golf,

is that right?

A Correct.

Q Now, tell us, if you will, please, whether you ever did anything else in 1970,if you can recall, concerning puttingon any demonstrations or doing anything over at Grossinger's?

A I have a number of times, two or three times, from 196[illegible]7, or this year, I didn't bring a horse this year, but I brought a horse and equipment to Grossinger's and they had the guests, it could be 100 or 200 guests, and I would explain the horse and the equipment, how he races and what kind of rigging, hobbles, harness and bridles and sulkies, and whatnot, to the people, the guests that were there.

Q Mr. Curran,how many years have you been going to Grossinger's and playing golf as a part of these horsemen's outings?

A Oh,since 1965, '66 I started playing.

Q And have you been doing it every year since?

A Yes.

Q May I ask you this, have you ever, when going over in a horsemen's outing, have you ever signed a golf slip?

A No.

Q You certain of that?

A Positive.

Q Now, what of the procedure, normally, when you would get over to Grossinger's, what would you do first?

A We would have lunch. As horsemen, we would go as a group, anywhere from 25 to 40 of us, not everybody went in one group, everybody usually brought their own cars, and you just go in and sit down and have your lunch, and then we would go in the pro shop, give us three free balls.

Q Three free golf balls?

A Right. And a cart, and away we would go.

Q Now, when you would finish playing golf, wouldyour normally play 18 holes?

A Nine or 18, according to how late you got there. Not everyone got there at the same time, you know.

Q And then after the golf, what would you do?

A We would go back and have a little refreshments, and according to how early, whether you were racing or, an early race or late race, of course in our police we have breathalizers, and you cannot drink if you are racing in an early race, but if you weren't racing you would go and have a few refreshments and some small talk and lie about how good you hit the ball.

Q How about, were you invited for dinner?

A We were invited, but I -- at the time I was taking a lot of catch drives, so I was racing every night, so I had to be back at the racetrack.

Q You never stayed there?

A Never.

Q Let me askyou this, at one given time during July or August in 1970, how many horsemen trainers or grooms would be at Monticello Raceway?

THE COURT: I think there is a preliminary to that. You might inquire whether your dates are correct.

Q In 1970 do you recall approximately how many horsemen or trainers or grooms or drivers would be at Monticello?

A At the Raceway?

Q Yes.

A It had to be between 100, 200 trainers, drivers and more than that, grooms, but trainers and drivers between 100 and 200.

Q Now, on these outings, these affairs, were there occasions when racetrack officials would go?

A Yes.

Q Were there occasions when owners of horses would go?

A Yes.

Q And incidentally, were there occasions also when the wives were invited to come along?

A Yes.

Q What arrangements would be made for the wives, or what would they do while the men were playing golf?

A Some of the wives played golf right along with them.

Q What about those who did not play golf?

A They went to the swimming pool or went around the hotel, lounged around.

MR. FAHRINGER: I have no further questions.

CROSS-EXAMINATION

BY MR. KINGHAM:

Q Mr. Curran, is it?

A Correct.

Q Mr. Curran, Monticello is a harness racing track, is that right; I believe you described some of the equipment?

A That's right.

Q And harness racing is where there is a sulky with wheels that is pulled behind a horse, is that right?

A That's right.

Q And you drive the sulky?

A That's right.

THE COURT: A sulky is a carriage, isn't it?

THE WITNESS: Correct.

THE COURT: Not all of us go to the race-track.

Q Mr. Curran, do you -- well, let me ask this. You have been at Monticello since the track opened, which is around 1957 or '58, is that right?

A Right.

Q And you have been racing up there every summer?

A I missed one or two summers, or didn't stay a full meet.

Q Do you know what summers it was that you missed?

A In the late '60s.

Q It wasn't 1970?

A No, it was not.

Q You know for sure you were there?

A I have been there steadily for the past ten years, let's say.

Q Okay.

A I said late '60s, I should have said early '60s.

Q Early '60s, fine.

In 1970, I believe you testified you were racing every night, is that correct?

A Yes.

Q And generally, if you were racing every night you'd have to be in the paddock by 6:30 or 7 o'clock, would that be true?

A If you were in the daily double you had to be in by 7 o'clock.

Q Of if you were in an early race?

A Well, the daily double is the first and second

race.

Q First and second race. And so the jury understands, what is the paddock at a racetrack?

A That is the area where you bring the horse and get him ready to race, and he stays there while he is warming up, it's enclosed to keep out the public or -- and it's a security area.

Q And would you say, Mr. Curran, that you went on every golf outing in 1970?

A I am a golf nut. I never missed.

Q You never missed them, sir?

A Never missed.

Q And when you would go on the golf outings, you would play golf, you'd have lunch, you'd play golf, maybe you'd have a drink if you were in a late race, and then you'd leave Grossinger's and go over to the track, is that right, and get ready for whatever race you had?

A Correct.

Q And is it your testimony that during 1970 you were racing all the time,almost every night?

A Practically every night, correct.

Q And is it also your testimony that during 1970, Mr. Curran, you never stayed to have dinner at

Grossinger's after playing at a golf outing?

A That is correct.

Q You are quite sure of that?

A Yes.

Q I'd like to show you, Mr. Curran, Government's Exhibit 2A in evidence, which is a bill reflecting apparently some golf outings. Does that appear to be a golf outing bill, greens fees and cart rentals and that sort of thing?

A That's what it would be, greens fees, cart rentals, lunches, gratuities.

Q And that was the sort of thing that you would enjoy when you went over to Grossinger's to have the golf outing, isn't that correct?

A That's correct.

Q And it was understood, at least by you, that it was on the house, you didn't have to pay for it, isn't that correct?

A That's correct.

Q Now, Government's Exhibit 2A reflects a golf outing on July 8, 1970, does it not?

A It does.

Q Do you know if you raced on July 8, 1971?

A I do not remember.

Q Well, let me show you, if I may, Government's Exhibit 32 for identification, and tell me, sir, if you look at that, whether or not that refreshes your recollection as to whether or not you raced on July 8, 1971.

THE COURT: July 8, '71?

MR. KINGHAM: I am sorry, 1970, your Honor.

A I am in the program: I must have raced.

Q Does that refresh your recollection that you raced?

A Yes.

Q And do you know what race it was that you were in that night?

A Well, it's an early non-betting race for two year olds.

Q So what time would you have to be back in the paddock at the track if you were going to race in that race?

A If I can look further in the program I can tell you.

MR. KINGHAM: Why don't we consider the whole program marked as Government's Ehxibit 32.

Q And if you would look there, and tell me if it would refresh your recollection as to what time

you would have to be in the paddock to race in the early race?

A I would have to be in the paddock at 7 o'clock.

Q And so you could not have dinner at Grossinger's that night, is that a fact?

A That's correct.

Q Calling attention to Government's Exhibit 2A, which is the bill, does that not reflect that 31 horsemen had lunch, cocktails, and that 31 horsemen stayed for dinner?

A That's correct.

Q Mr. Curran, do you know Jacob Iberger?

A I do.

Q Jacob Iberger was also a golfer, was he not?

A Yes.

Q Did Jake Iberger go on all the outings in 1970 with you?

A I don't really know.

Q He was the security director at the raceway, wasn't he?

A Correct.

Q And is it your testimony that to your knowledge there was no sign up system in 1970 whereby you went to a room by the racing secretary's office

and signed up to play golf?

A That is correct.

Q Do you recall, Mr. Curran, whether there were announcements overthe loud speaker on the mornings of the golf outings?

A There was.

Q And in response to that announcement you would be told what hotel the golf outing was at, isn't that correct?

A That's correct.

Q And those announcements invariably came on Wednesdays because Wednesdays were the golf outing days?

A Wednesday morning, correct.

Q And what you would do in response to the announcement was that you would go, when you finished your morning chores, over to whatever hotel was having the golf outing, is that correct, sir?

A That's right.

Q And indeed you have played golf at other hotels in the Catskills, other than Grossinger's, have you not?

A I have.

Q And golf outings were also held in other

hotels?

A They were.

Q And golf outings were held at the Nevele Country Club, were they?

A That's correct.

Q And were golf outings held at Kutsher's Country Club?

A Yes.

Q And the Pines?

A Yes.

Q And Falls View?

A That I don't know. I don't remember playing Falls View.

Q Okay. But in any event, Nevele, Kutscher's, the Pines and Grossinger's?

A Yes.

Q Now, all of those hotels that I have just mentioned had regulation type golf courses, did they not?

A Correct.

Q There was another hotel called the Laurels in the Catskills?

A That's correct.

Q Do you recall having played there on occasion?

A Yes.

Q That was not a regulation golf course, was it?

A It's a nine-hole course.

Q So it would not be the normal 18-hole golf course.

A You play the same nine holes twice.

Q And the Laurels course, Mr. Curran, as a "golf nut," self described, would you consider the Laurels course was not as good as the other courses I have just mentioned ?

A Agreed.

Q And which of those courses did you consider the best, was it Grossinger's?

A Absolutely.

Q Because they had the biggest and the best golf course, isn't that correct?

A The biggest, best golf course, and the best lunch, and they made us the most welcome, I believe.

Q But there is no question in your mind, sir, that you played at the Nevele and Kutsher's and the Pines?

A Correct.

Q Do you recall specifically as you sit there today exactly how many golf outings were held at Grossinger's

during 1970?

A I do not recall exactly, no.

Q How long did the racing meet, and perhaps -- let me ask you that question first. What is the racing meet? What does that mean?

A We opened March 27 and we closed September 14, I believe the dates were. I wouldn't swear to it, but close.

Q Was that in 1970?

A Yes, this year.

Q Would that be a typical schedule from March through September or early October, something like that?

A Correct.

Q And would you say that there were golf outings at least from May through the end of the meet on Wednesday?

A Yes.

Q Do you recall?

A Yes.

Q So they are not just during July and August?

A No.

Q Do you know, sir, whether or not you played golf at Grossinger's on July 8, 1970?

A I do not remember the exact date, no.

Q Do you know whether or not you played on July 22, 1970?

A I do not.

Q Do you know whether or not you played on any specific Wednesday by date during 1970?

A By date I do not.

Q And I take it you do not recall what date you would have played at the Nevele or Kutscher's or any of those?

A I would not remember what dates, no.

Q And you do not recall what days there were golf outings at any of those other hotels, do you?

A It was every Wednesday, and that's all I remember.

Q You went someplace on a Wednesday, isn't that correct?

A Correct. We tried to play the Grossinger course because it was the best.

MR. KINGHAM: Nothing further, your Honor.

MR. FAHRINGER: May I, your Honor, just a few questions.

REDIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mr. Curran, did youhave a membership to the

Grossinger golf course?

A For doing the favor of bringing horses over, and putting on the exhibition, Paul has given me membership, yes.

Q In other words, as a result of your going over and putting on these exhibitions he gave you a membership at the golf course?

A Correct.

Q So you were entitled to go over there and play at any time in any event because you were a member?

A Yes.

Q May I also ask you this, that do you know whether there would be men that would go on the outings who weren't racing on like a Wednesday night of the outing?

A Yes.

Q They would be free to stay as late as they wanted then?

A Correct.

Q Do you know whether the wives also were invited to stay for dinner?

A The wives were made welcome there, whether they were invited to dinner or not, I do not know.

Q Incidentally, in 1970, was that the year

that they opened the new golf course at Grossinger's?

A I think '69 they were finishing, I think it was opened in 1970, they opened the full 27 holes. I'm pretty sure.

MR. FAHRINGER: Thank you.

MR. KINGHAM: Nothing further, your Honor. Thank you.

THE COURT: Nothing further, you are excused.

(Witness excused)

# Affidavit of Service

Records and Briefs
For State and Federal Courts
Established 1881

313 Montgomery Street
Syracuse, New York 13202
(315) 422-4805

Russell D. Hay/President
Everett J. Rea/General Manager

**Spaulding Law Printing**

Re **United States of America vs. Leon Greenberg**

State of New York )
County of Onondaga) ss.:
City of Syracuse )

**EVERETT J. REA,**
Being duly sworn, deposes and says: That he is associated with Spaulding Law Printing Co. of Syracuse, New York, and is over twenty-one years of age.

That at the request of **Herald Price Fahringer, Esq.,**

Attorney(X) for **Appellant,**

**one (1) copy**

(X)he personally served ~~XXXXXXXXX~~ of the printed ☐ Record ☐ Brief ☒ Appendix of the above entitled case addressed to:

**T. BARRY KINGHAM, ESQ.**
**Assistant U.S. Attorney**
**U.S. Court House**
**Foley Square**
**New York, New York 10007**

☒ By depositing true copies of the same securely wrapped in a postpaid wrapper in a Post Office maintained by the United States Government in the City of Syracuse, New York.

☐ By hand delivery

Everett J. Rea
**EVERETT J. REA**

Sworn to before me this **24th** day of **February, 1976.**

Donald C. Quinn
~~Notary Public~~
Commissioner of Deeds

**cc: Herald Price Fahringer, Esq.**